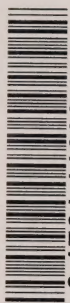


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# FLOUR-MILLING INDUSTRY

~

Investigation into an Alleged Combine in the  
Manufacture, Distribution and Sale of Flour  
and Other Grain-Mill Products

~

REPORT OF COMMISSIONER, COMBINES INVESTIGATION ACT

DEPARTMENT OF JUSTICE

OTTAWA, DECEMBER 29, 1948

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# FLOUR-MILLING INDUSTRY



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REPORT ON COMMERCE, MANUFACTURE, DISTRIBUTION AND OTHER CHAIN OF SUPPLY

DEPARTMENT OF COMMERCE

OTTAWA, CANADA



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## COMBINES INVESTIGATION COMMISSION

DEPARTMENT OF JUSTICE

OTTAWA

December 29, 1948.

Honourable STUART S. GARSON, K.C.,  
Minister of Justice,  
Ottawa.

Sir,—I have the honour to transmit to you herewith the report of an investigation under the Combines Investigation Act into an alleged combine in the manufacture, distribution and sale of flour and other grain-mill products in Canada.

This investigation was instituted in September, 1947, and has been made pursuant to Section 12 of the Combines Investigation Act. The activities of the Canadian National Millers Association, Canadian National Millers Association (Western Division) and the operations of their members have been the principal matters considered during the investigation.

Hearings were held before me in private in Winnipeg in October and November, 1947, and in Toronto and Montreal in January, February and March, 1948. Twenty-six witnesses were examined on oath during twenty-six days of hearings. Over six thousand documents, obtained from records of flour-milling companies and of the above associations, were filed as exhibits. At these hearings witnesses were examined by counsel for the Commission, and each company had opportunity to be represented by counsel when its officers were examined.

At my request counsel for the Commission prepared a detailed summary of and commentary on the evidence which I then sent to the companies and persons involved as notice of the matters alleged. At the same time they were invited to supplement in any way they wished the representations and evidence already given during the hearings in regard to the same matters. Full opportunity was then given for those involved to present such further representations and evidence. Written or oral argument was then presented by or on behalf of all to whom notice had been given. In some instances the argument was directed primarily to a claim that the Commissioner had acted without jurisdiction and without giving them adequate notice. On June 4, 1948, further hearings were held before me in Ottawa during which argument was heard from an officer of one company and its counsel.

Mr. John G. Ahern, K.C., of Montreal, who was appointed by the Minister of Justice to act as counsel in the investigation, conducted the examination of witnesses throughout the hearings and I wish to acknowledge the able services which he has rendered.

Yours faithfully,

F. A. MCGREGOR

*Commissioner,  
Combines Investigation Act.*

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# REPORT TO THE MINISTER OF JUSTICE

## I. THE FLOUR MILLING INDUSTRY

This report is concerned with trade arrangements relating to the manufacture, distribution and sale of flour and other grain-mill products which include rolled oats, coarse grains and millfeeds, i.e., bran, shorts and middlings being the offals separated in the usual process of flour milling.

The flour milling industry is one of the oldest and most important manufacturing industries in Canada and for many years Canada has been one of the leading exporters of wheat flour. That it should occupy such an important position is in view of the fact that wheat is one of Canada's chief raw products.

According to The Canada Year Book 1947, the domestic consumption of flour in the crop year 1945-46 amounted to approximately 12,837,000 barrels (of 196 pounds each) or slightly in excess of one barrel per person. In the same period Manitoba Spring Wheat was the chief type of wheat ground in Canada's flour mills representing 88.72 per cent of the total grind; the remaining 11.28 per cent was made up of Ontario Winter Wheat, Durum, Garnet and other types of wheat.<sup>1</sup>

In 1946, the latest year for which complete figures are available, the gross value of the product of the flour milling industry amounted to \$214,828,021. The leading products, quantity produced and their gross value were:<sup>2</sup>

Product	Quantity	Gross Value
Wheat Flour .....	27,036,462 bbl.	\$163,694,522
Shorts and Middlings .....	516,329 tons	13,717,259
Bran .....	439,920 tons	9,795,466
Rolled Oats and Oatmeal . . . . .	125,247 tons	10,836,466
Chopped Grain Feed .....	229,632 tons	8,596,695

Large scale production in the industry in Canada began in the latter part of the nineteenth century following the introduction of the gradual reduction or roller milling process which rapidly superseded the stone process and led to the development of larger mills. By the 1880's the roller process had largely supplanted the stone process in the Canadian industry. The opening of the West, extension of transportation facilities and development of Canada's export trade in wheat and its products all resulted in the substantial progress of the industry. World Wars I and II created great demands for the products of the industry. It was during these periods that the most spectacular increases in production were made, culminating in the crop year 1946-47 when production amounted to 28,588,456 barrels of flour of which export accounted for 16,896,233 barrels.<sup>3</sup> With the smaller wheat crop in 1947 production and exports of flour in the crop year 1947-48 declined from these record levels.

By the end of World War I the industry had developed capacity far in excess of the needs of the domestic market. Some reductions were made after 1928, when mill capacity was 121,000 barrels of flour per day, but even with these reductions the demands for flour, especially from export markets, resulted

<sup>1</sup> Dominion Bureau of Statistics—Report on the Grain Trade of Canada 1945-46.

<sup>2</sup> Dominion Bureau of Statistics—Report on the Flour and Feed Milling Industries in Canada 1946.

<sup>3</sup> Dominion Bureau of Statistics—Monthly Review of The Wheat Situation, Vol. 19, No. 3, October, 1948.

in the scale of operations remaining well below maximum plant capacity. This was particularly the case after the onset of the depression and is reflected in the decline of exports from 10,737,266 barrels in 1928 to 5,342,172 barrels in 1939. In the latter year mill capacity was 101,454 barrels per day. It was not until heavy export demands arose during World War II that the production of flour rose to capacity level as shown by the accompanying table.<sup>1</sup>

Percentage of Mill Capacity in Operation  
(Crop Years)

1939-40 .....	65·7 per cent	1944-45 .....	91·2 per cent
1940-41 .....	72·5 " "	1945-46 .....	96·5 " "
1941-42 .....	73·5 " "	1946-47 .....	100·8 " " 2
1942-43 .....	86·8 " "	1947-48 .....	81·0 " "
1943-44 .....	90·0 " "		

The period 1924 to 1931 saw a gradual reduction, from 457 to 372, in the number of flour mills in operation in Canada. Between 1931 and 1934 the number increased to 435. From 1934 to 1947 the number was reduced to 181, although the number of mills with a capacity of 1,000 barrels or more increased from twenty to twenty-three in the same period. The reduction has been in the number of small mills, i.e., mills having a capacity of less than 1,000 barrels per day, as indicated in the Dominion Bureau of Statistics Report on the Flour and Feed Milling Industries in Canada, 1940, wherein it is stated:

"The decrease in the number of establishments during the past few years is largely due to more extensive distribution services now in force by some of the larger milling companies covering the more sparsely populated areas. This has superseded to a great extent the former system of obtaining flour and other cereal products from the local mills, some of which have consequently discontinued operations."

<sup>1</sup> Dominion Bureau of Statistics—Reports on the Grain Trade of Canada 1939 to 1945-46, Canadian Milling Statistics, July, 1947, and July, 1948.

<sup>2</sup> This figure indicates that some mills operated more than the customary number of days in the year.



## II. THE CANADIAN NATIONAL MILLERS ASSOCIATION

The Canadian National Millers Association (C.N.M.A.), an unincorporated body maintaining an office at 522 Board of Trade Building, Montreal, P.Q., was formed about 1920. The secretary of C.N.M.A. since 1929 has been D. E. Murphy.

The Western Division, known as the Canadian National Millers Association (Western Division) was formed in 1936 and maintains an office at 302 Great West Permanent Building, Winnipeg, Manitoba. D. P. Noel has acted as secretary of the Western Division since its formation.

With their large productive capacity the members of the C.N.M.A. and Western Division dominate the Canadian flour milling industry. In the period 1936-1947 their combined productive capacity has averaged approximately 70 per cent of the Canadian productive capacity. In 1946, the latest year for which such figures are available, the flour production of the Canadian flour and feed milling industries amounted to 27,151,932 barrels; the member companies of the Association produced 20,954,944 barrels, or slightly in excess of 77 per cent of the total. For millfeeds, being the offals separated in the process of flour milling, the figure is almost 74 per cent, representing production by Association members of 706,704 tons out of a total production of 956,250 tons.

Rolled oats and oatmeal are produced by only four of the member companies of the Association: Ogilvie, Purity, Quaker and Robin Hood. Of a total production in Canada of 128,884 tons in 1946, these companies produced 123,397 tons or more than 95 per cent.

### 1. Ontario, Quebec and the Maritime Provinces

The Executive Committee, consisting of the Board of Directors, is the most important body in C.N.M.A. It is responsible for the formulation of policies and the administration of the affairs of the Association, particularly with respect to Central and Eastern Canada and export trade. The members of the Board of Directors are elected annually. The practice has been to elect to the Board one senior executive, generally the president, of each member company of C.N.M.A.

(1) MEMBERSHIP. Qualifications for membership in the C.N.M.A. are indicated in the following by-law of the Association No. 24, which was adopted by the Executive Committee on November 15, 1929:

"Any wheat flour or cereal miller in Canada, whether a company, a partnership or an individual, and any officer of any Provincial or local organization of Canadian Millers, who is in good standing in the trade, shall be eligible for membership in the Association."

(Exhibit 629)

Since 1936 the membership has consisted, with one exception, (McDonald and Robb Limited), of large milling companies, i.e., companies with mills having a total capacity of 1,000 barrels per day or more. There is no evidence to indicate any restriction whatever on membership. The assessment for annual dues in September, 1947, was on the basis of thirty cents per barrel daily capacity with a maximum payment based on capacity of 11,000 barrels.

The companies which were members of C.N.M.A. in September, 1947, are listed below, with a brief note on each company:

*Lake of the Woods Milling Company Limited* (Lake of the Woods), 460 St. John Street, Montreal, P.Q., has been a member of C.N.M.A. since 1920. The location of its flour mills and their daily capacity are:

Brantford, Ontario.....	1,200 barrels
Keewatin, Ontario.....	10,000 barrels
Medicine Hat, Alberta.....	1,400 barrels

It also operates a feed mill at Portage la Prairie, Manitoba, purely for the mixing of coarse grains for the mixed carload trade. The Sunset Manufacturing Company, operating a jute and cotton bag factory at Winnipeg, is a wholly-owned subsidiary. Lake of the Woods controls Inter City Baking Company, Limited, which owns the following bakeries: Brown's Bread Limited, Toronto, Ontario; Standard Bread Company Limited, Ottawa, Ontario; and A. and L. Strachan Limited, Montreal, P.Q.

*Maple Leaf Milling Company Limited* (Maple Leaf), 68 Yonge Street, Toronto, Ontario, has been a member of C.N.M.A. since 1920. It has the largest capacity of any milling company in Canada. The location of its flour mills and their daily capacity are:

Port Colborne, Ontario ...	13,000 barrels
West Toronto, Ontario ....	2,500 barrels (soft wheat flour)
Medicine Hat, Alberta ...	1,600 barrels

In addition the company has a feed unit at Port Colborne, Ontario, and at Montreal, P.Q., each of which can produce 400 tons per day. The Ontario Bag Company is a wholly-owned subsidiary and produces bags for the company and for sale to the general trade. Maple Leaf controls Canada Bread Company Limited, which operates nineteen bread and cake plants and fifty-nine distributing depots in Quebec, Ontario and Manitoba; Canadian Bakeries Limited, which operates eighteen plants in Saskatchewan, Alberta and British Columbia; and Eastern Bakeries Limited, which operates a chain of bakeries in the Maritimes.

*McDonald and Robb Limited*, (McDonald and Robb), Valleyfield, P.Q., has been a member of C.N.M.A. since 1920. It operates one flour mill at Valleyfield having a daily capacity of 350 barrels. Apart from export its sales are principally in Quebec and to a lesser extent in Southeastern Ontario.

*The Ogilvie Flour Mills Company Limited*, (Ogilvie), Sun Life Building, Montreal, P.Q., has been a member of C.N.M.A. since 1920. The location of its flour mills and their daily capacity are:

Montreal, P.Q. ....	5,800-6,000 barrels
Winnipeg, Manitoba .....	2,600 barrels
Medicine Hat, Alberta .....	2,350 barrels
Edmonton, Alberta .....	550 barrels

The company also operates a rolled oats mill at Winnipeg with a capacity of approximately 800 barrels per day. In addition there is a combined plant in Montreal for the manufacture of feeds, cereals and odd lines. It has a new feed mill under construction at Edmonton, Alberta, and property was acquired at Humberstone, Ontario, in 1947, for construction of a modern flour mill. The company's flour mill in Montreal has been replaced recently by a new mill which is now reported to be in operation. Through its subsidiary, Glenora Securities Incorporated, Ogilvie owns 45.8 per cent of the issued shares of



Consolidated Bakeries of Canada Limited, Montreal, P.Q., which through subsidiaries operates fifteen bakeries in Ontario and Quebec; a minority stock interest in McGavin Limited, Edmonton, Alberta (a Dominion company), which owns three bakeries in Alberta; a minority stock interest in McGavin Limited, Vancouver (a British Columbia company), with two bakeries in British Columbia; a controlling stock interest in McGavin Bakeries Limited, Vancouver, which has bakeries in Manitoba, Saskatchewan, Alberta and British Columbia.

*Purity Flour Mills Limited*, (Purity), 287 MacPherson Avenue, Toronto, Ontario. Prior to February 12, 1945, the company was known as Western Canada Flour Mills Company Limited, at which time it was re-organized and the name changed. Purity's predecessor company was a member of C.N.M.A. from 1920 to February 1945, at which time Purity succeeded to its membership. The location of its flour mills and their daily capacity are:

Goderich, Ontario .....	2,500 barrels
St. Boniface, Manitoba .....	5,500 barrels
Calgary, Alberta .....	1,500 barrels

The company operates a cereal mill at Calgary with a daily capacity of 400 barrels. It has feed mills at Montreal, Goderich and Winnipeg. *The Brackman-Ker Milling Company Limited* (B & K), 640 Front Street, New Westminster, B.C., is a wholly-owned subsidiary of Purity and operates a large feed mill at New Westminster. Purity also owns a salt plant at Goderich and owns all the issued capital stock of Andre Proulx Limitee, a baking company of Hull, P.Q.

*The Quaker Oats Company of Canada Limited*, (Quaker), Hunter Street, Peterborough, Ontario, is a wholly-owned subsidiary of the Quaker Oats Company, a United States corporation. Prior to September 1, 1943, The Quaker Oats Company was registered in Canada and carried on business under that name. On that date the Canadian subsidiary was incorporated and took over the operations of the parent company in Canada. The Quaker Oats Company was a member of C.N.M.A. from 1920 to September 1943, at which time Quaker succeeded to its membership. The location of its flour mills and their daily capacity are:

Peterborough, Ontario .....	4,000 barrels
Saskatoon, Saskatchewan .....	2,000 barrels

At Peterborough there is a rolled oats mill with a daily capacity of 3,000 barrels and also facilities for daily production of 250 tons of commercial feeds, 200 barrels of pot and pearl barley and 200 barrels of corn meal. At Saskatoon there is a rolled oats mill with a capacity of 500 barrels per day and facilities for production of 80 tons per day of commercial feeds and a very small quantity of pot and pearl barley.

*Robin Hood Flour Mills Limited*, (Robin Hood), Moose Jaw, Saskatchewan, is a subsidiary of International Milling Company, a United States corporation, and operates the business of that company in Canada. Until January 11, 1938, the company was known as Robin Hood Mills Limited. The company has been a member of C.N.M.A. since 1920. The location of its flour mills and their daily capacity are:

Humberstone, Ontario .....	5,000 barrels
Moose Jaw, Saskatchewan .....	4,000 barrels
Saskatoon, Saskatchewan .....	3,500 barrels
Calgary, Alberta .....	2,000 barrels

The capacity of the mill at Humberstone was increased from 2,500 to 5,000 barrels in 1947. The company has a rolled oats mill at Moose Jaw with a daily capacity of 1,200 barrels.

*St. Lawrence Flour Mills Company Limited*, (St. Lawrence), 2110 Notre Dame Street West, Montreal, P.Q., has been a member of C.N.M.A. since 1920. The company has one flour mill with a daily capacity of 3,000 barrels. Apart from export its sales operations are limited mainly to Quebec and the Maritimes and to a small degree, Ontario.

*Copeland Flour Mills Limited*, (Copeland), Midland, Ontario, has one flour mill at Midland with a daily capacity of 1,250 barrels and a small feed plant for local distribution. Apart from export its principal market areas have been in Ontario and to a lesser degree Quebec and the Maritimes. Copeland was a member of C.N.M.A. from 1922 to 1934 and did not rejoin the Association until June or July of 1946. Owing to differences of opinion its membership again terminated in the latter part of 1947.

*Lakeside Milling Company Limited*, (Lakeside), Esplanade at Princess Street, Toronto, Ontario, has one flour mill at Toronto with a daily capacity of 1,000 barrels. Apart from export business the company sells in Ontario, Quebec and the Maritimes. Lakeside did not become a member of C.N.M.A. until June, 1947. However, for some years prior to this it was represented on the Maritime Sales Managers committee of the Association from time to time.

(2) OFFICERS AND DIRECTORS. The C.N.M.A. has three officers: a Chairman, Vice-Chairman and Secretary. Generally, the positions of Chairman and Vice-Chairman have been rotated among the members of the Board from year to year. For a period prior to 1941 there was also a position of Honorary President, which was held by C. H. G. Short. The officers elected on December 18, 1947, were: C. H. G. Short, Chairman; R. A. Henderson, Vice-Chairman; and D.E. Murphy, Secretary.

Members of the Board of Directors elected on December 18, 1947, were:

- D. A. Campbell (St. Lawrence)
- N. H. Campbell (Lakeside)
- R. R. Faryon (Quaker)
- R. A. Henderson (Robin Hood)
- J. A. McDonald (McDonald and Robb)
- G. A. Morris (Ogilvie)
- C. H. G. Short (Lake of the Woods)
- K. F. Wadsworth (Maple Leaf)
- D. I. Walker (Purity)

(3) COMMITTEES. In addition to the Executive Committee already described there have been the following committees made up of provincial or regional sales managers of the member companies of the Association:

- Ontario Sales Managers Committee
- Quebec Sales Managers Committee
- Maritime Sales Managers Committee

Prior to 1944, the Maritime and Ontario sales managers usually met together as the Ontario and Maritime Sales Managers Committee. Since 1944 they have functioned as entirely separate committees with separate chairmen.

The purpose of these committees appears to have been to promote interchange of ideas and better understanding among the members in order to dispose of contentious matters of a local or regional nature which otherwise



would have to be dealt with by the Executive Committee. The committees have dealt with such matters as prices, terms of sale, classification of customers and other matters relating to price from a local, provincial or regional point of view. A review of the minutes of their meetings indicates that in many cases final decisions were made, while in other similar cases only recommendations were made to the Executive Committee. According to the evidence of D.E. Murphy, the Association Secretary, these sales managers were empowered to make decisions on matters with which the Executive were not familiar, and on which their own principals empowered them to make decisions.

The Executive Committee minutes of the meeting of September 4, 1936 (Exhibit 629), provided for regular monthly meetings of the Ontario and Maritime Sales Managers Committee and for semi-monthly meetings of the Quebec Sales Managers Committee. It is not clear how long this practice was followed. It was stated in evidence that the meetings of these committees in recent years have been quite infrequent.

There is also an Export Committee which, as its name implies, deals solely with export matters. The representatives on this committee are usually managers or members of the export department of the member companies.

The chairmen of these sales managers and export committees are appointed at the meeting of the Executive Committee following the annual meeting. The chairmen appointed at the meeting of December 18, 1947, were:

Export Committee .....	H. C. Moore (Lake of the Woods)
Ontario Sales Managers Committee	J. A. Harper (Maple Leaf)
Maritime Sales Managers Committee	A. G. Watson (St. Lawrence)
Quebec Sales Managers Committee	J. A. Blais (Robin Hood)

General sales managers have also met from time to time to deal with matters applicable to more than one province or region. Special committees have also been appointed from time to time to deal with particular matters referred to them.

## 2. Western Canada

Prior to 1936 the members of C.N.M.A. doing business in Western Canada were also members of the Western Millers' Association.<sup>1</sup> In 1936 it was decided to wind up the affairs of this Association and organize under the name of Western Division of the Canadian National Millers Association. This had its beginnings at the C.N.M.A. Executive Committee meeting of April 14, 1936, when it was duly moved:

"THAT inasmuch as it is considered in the interests of the milling industry to establish a Western division of the Canadian National Millers' Association to more effectively deal with the problems of the industry—

BE IT RESOLVED that this meeting go on record as approving the principle, and the Executives representing Western Mills undertake to instruct their Western Managers to meet for the purpose of setting up a Western Division; the engaging of a secretary; establishing the necessary machinery for the conduct of the Association's affairs under an arrangement whereby the cost of the Western Secretariat will be distributed pro rata over the Western Members on a basis to be fixed by the Western Members."

(Exhibit 650)

The organizational meeting was held in Winnipeg on May 27, 1936, when the affairs of the Western Millers' Association were wound up and the Western Division of C.N.M.A. was established. Officers and members of the Advisory Committee were elected and provision was made for the employment of a full-

<sup>1</sup> This organization was entirely different from the present Western Millers' Association, organized in 1942, which is composed of the members of the various provincial small mills' associations in Western Canada.

time Secretary. A constitution was approved, one member dissenting, which provided for an Executive Committee, on which each member of the Association was represented, and for an Advisory Committee, composed of three members of the Executive resident in Winnipeg. The functions of the Advisory Committee were to maintain a general supervision over the affairs of the Association, to meet in conference at arranged intervals and formulate plans for the attainment of the objects of the Association for submission to the Executive from time to time. These objects were declared to be:

"To compile, record, acquire, and make available to its members information respecting the milling trade and allied trades and to promote and maintain uniformity of business dealings, customs and regulations among the persons engaged in such trade, or trades, and generally, to secure to its members the benefits of legitimate co-operation."

(Exhibit 606)

The present members of the Executive were not on the Executive Committee at the time of the organizational meeting and they and the Secretary had no knowledge of the existence of a constitution. One of the principal objects of the Association, however, according to the evidence of its Chairman and Secretary, was the stabilization of flour prices.

While the minutes show the election of representatives to the Advisory Committee each year until 1943, in 1941 and 1942 it was comprised of all members of the Executive Committee. The minutes from 1943 on do not indicate any election of representatives to the Advisory Committee, but simply set out the members of the Executive Committee.

The functions of the Western Division have been parallel to those of C.N.M.A. in the East, except that they have been confined entirely to the domestic market from the Head of the Lakes region to the Pacific Coast. It is not concerned with export matters, which have been handled by the C.N.M.A. The Executive has been the most important body in the Western Division, with functions similar to those of its C.N.M.A. counterpart in the East. In matters of policy of a national nature, the Western Executive has of course been subordinate to the Executive Committee of C.N.M.A. on which the member companies have been represented by their senior executives.

The number of Executive meetings held in each year has varied; between 1941 and 1945 they averaged between six and nine per year. The available records indicate that only six meetings were held in the period from January, 1946, to November, 1947. Meetings are held in Vancouver, Calgary, Saskatoon, Regina and Winnipeg, the majority in the latter city where most of the members of the Executive reside. No record is kept of attendance at meetings, but according to the evidence of the Secretary the full membership would be represented, otherwise the meetings would not be held.

(1) MEMBERSHIP. The Western Division has had no by-laws and, so far as could be determined, no regulations governing qualifications for membership. The Secretary and those members of the Executive who were examined stated that the by-laws of the C.N.M.A. were not applicable to the Western Division. The salary and expenses of the Secretary, including the maintenance of his office, have been met by an equal quarterly assessment against each member. There is no evidence to indicate any restriction on membership, but the present membership includes only those members of the C.N.M.A. operating and doing business in Western Canada, namely:

Lake of the Woods  
Maple Leaf  
Ogilvie

Purity  
Quaker  
Robin Hood

In addition, the *Ellison Milling & Elevator Company Limited*, (Ellison), Lethbridge, Alberta, is an "associate" member of the Western Division. It is not represented on the Executive, although its officials are known to have attended Executive meetings on occasion. Its financial contributions are



stated to be voluntary and on a much smaller basis than those of the members. They were first made in 1943, on the basis of the considerable service rendered by the Association in the matter of export flour business. From time to time representatives of the company have attended and taken part in meetings of the Alberta and Vancouver regional groups of the Western Division. Ellison was a member of the C.N.M.A. in the years 1920-21.

As previously mentioned The Brackman-Ker Milling Company Limited of New Westminster, British Columbia, is a wholly-owned subsidiary of Purity. It was stated by the General Manager of B. & K. that the company acts merely as agents for Purity, but in representations made on behalf of Purity by their counsel this statement was said to be incorrect and that in fact B. & K is merely a wholesale buyer and seller of flour which purchases its requirements from Purity and resells in the British Columbia market. While B. & K has not been a member of the Western Division, it would appear that the membership of Purity, its parent company, has entitled it to some participation in the affairs of the Association. It has been represented from time to time at meetings of the Vancouver regional group, and in fact one of its employees has acted as secretary of that group.

(2) OFFICERS. Officers have usually been elected once a year, the position of chairman being rotated among members of the Executive.

The officers and Executive of the Western Division who were elected at the meeting of January 23-24, 1946, and who held office at the time formal hearings were held in Winnipeg, were:

Chairman	— W. P. Noble (Quaker)
Vice-Chairman	— A. W. Mulligan (Purity)
Treasurer	— W. J. Marshall (Ogilvie)
Secretary	— D. P. Noel
Executive	— G. H. Booth (Lake of the Woods)
	— L. A. Eagleton (Maple Leaf)
	— E. B. Frost (Ogilvie)
	— W. J. Henning (Robin Hood)

(3) REGIONAL GROUPS AND COMMITTEES. In addition to the Executive two regional groups have met from time to time, the Alberta and Vancouver groups, which generally are comprised of the Alberta and Vancouver Divisional or Sales Managers respectively. The principal function of these groups is set out in the minutes of the Executive meeting of July 3, 4 and 5, 1941:

"Agreed that regional meetings, when arranged, are simply to serve the purpose of examining local conditions and of making recommendations to the executive. No regional meetings are to upset executive decisions." (Exhibit 24)

Another function has been to review Executive decisions in order that they might be understood fully and implemented in the territories over which the members of the groups had jurisdiction. These groups have been concerned with prices and such related matters as terms of sale, classification of customers, establishment of distributing points and efforts to eliminate price cutting by members within their jurisdiction. They have not normally been empowered to take definite action on these matters, however, but have submitted their views to the Executive in the form of recommendations.

Sales Managers having jurisdiction over the Head of the Lakes region or Manitoba or Saskatchewan have met from time to time, when directed by the Executive, to deal with problems similar in nature to those dealt with by the Alberta and Vancouver groups. Special committees have also been appointed on occasion to deal with specific problems such as examination of particular aspects of flour distribution, submission of recommendations thereon and analysis and establishment of distributing points.



### III. PRICE AND OTHER AGREEMENTS IN ONTARIO, QUEBEC AND MARITIME PROVINCES

#### FLOUR

A principal feature of the activities of the C.N.M.A. has been the working out of various arrangements and agreements to establish uniform prices and terms at which the members sell their products. In the main these agreements have been arrived at by the Executive. The members have discussed from time to time, and have reached agreement on, what are termed selling structures, and on prices and terms within these structures. At times these functions have also been exercised by the Sales Managers Committees. Variations in prices have also been agreed upon by correspondence, generally through the medium of the Secretary's office. The agreements have been carried out by sales managers and local managers of the member companies with the assistance of the Secretary.

By far the largest quantity of flour manufactured in Canada is from Manitoba spring wheat, which is a hard wheat. As a rough rule it is generally considered that one barrel of 196 pounds of flour is produced from four and a half bushels of wheat. In the manufacture of flour from hard wheat various grades are produced, the percentage of each depending mainly on the quality of the wheat and to some extent on the efficiency of the mill. The different grades of flour have definitely different baking characteristics. There is a variance in the protein content and in the character and strength of the gluten and ash; the higher the grade, the lower the ash content and very often a lower protein content. In the C.N.M.A. the grades of flour are identified by descriptive names, but for purposes of simplicity the members also describe them by letters as indicated below:

A. Granular flour, such as wheatlets, macaroni flour or semolina.

B. Top patent or first patent flour, sometimes described as family flour, since it is sold largely to the family trade.

C. Intermediate patent, i.e., fifty per cent top patent and fifty per cent second patent flour.

D. Second patent flour, the principal grade used by bakers. It is generally considered the basic grade in selling, the other grades being sold at various price differentials above or below it.

E. Straight grade flour, sometimes described as an export patent.

F. Stuffed straight or fancy clear.

G. First clear, usually sold to manufacturers of animal feeds.

H. Second clear. Very little of this is sold on the domestic market.

Briefly, the system of control over prices has been exercised by the establishment of separate selling structures for Ontario, Quebec and the Maritime Provinces. This involved, within each structure, agreement upon prices and terms of sale, price differentials for the various grades of flour, price differentials for the different types of packaging and classification of customers. This system has been operative throughout the period 1936-1947 with the exception of intervals when the agreements are believed to have become inoperative because of extensive price cutting and the inability of the members to reach a new agreement.

#### 1. Subsidiary Agreements

In addition to the direct fixing of prices, indirect methods have also been agreed upon to prevent individual mills from reducing prices of flour, millfeeds or rolled oats. Agreements of this nature have generally been entered into at

meetings of the Executive or Sales Managers Committees and related mainly to terms of sale and discounts. They have included such matters as cash discount, time limitations on shipments, non-repricing and non-cancellation of contracts except under certain conditions, cartage charges, legitimate storage points and storage allowances, carrying charges on undelivered balances and the effective dates of price changes. The various agreements have not been in existence at all times throughout the period 1936-1947, some were in force only during certain periods, and all did not necessarily apply in every area, nor to the three products. It is apparent that agreement upon such uniform terms is pointless unless the prices of the products to which they related were likewise uniform.

Specific reference should also be made to the agreements not to give premiums contingent upon the purchase of flour and not to pack flour to be sold under dealers' private brands. The objection to the giving of premiums where there is agreement upon uniform price is clearly set out in a decision reported in Memorandum of Executive meeting of March 10, 1936:

"It was understood and agreed that premiums would not be given away contingent upon the purchase of flour. In other words, nothing will be given away with the purchase of a bag of flour which will, in effect, reduce the minimum price which the mill receives for its products." (Exhibit 577)

The agreement with respect to premiums was reaffirmed or varied from time to time at meetings of the Executive, the last reaffirmation being reported in the Memorandum of the Executive meeting of June 26, 1947, as follows:

"The understanding agreed upon in meeting June 27th 1945, to expire July 31st 1946, namely—

'Mills shall refrain from using, either directly or indirectly, cash or merchandise prizes or any form of premium in promoting sales or advertising their brands of flour—applicable to Winter Wheat Flour as well as Spring Wheat Flour'—

was reaffirmed on Spring Wheat Flour, on motion of Mr. Short, seconded by Mr. Henderson, and unanimously resolved, to continue in effect until otherwise agreed; it being definitely understood and unanimously agreed that a similar understanding with respect to Ontario Winter Wheat Flour be listed for discussion at the next meeting." (Exhibit 577)

Notwithstanding the fact that Quaker was represented at this meeting, the company's representative contended in his oral evidence that Quaker was not a party to this agreement. No objection, he said, had been made to the Secretary as to the manner in which the decision was reported, because the Secretary and the other mills knew Quaker's position. In the memoranda of Executive meetings the Secretary has noted several examples of dissents, reservations or lack of unanimity with respect to matters under discussion. For example, the agreement with respect to premiums was reaffirmed at the Executive meeting of June 27, 1945, but the following dissent by Quaker was also noted:

"The Quaker Oats Company, whilst not subscribing to the understanding, stated that they are not giving away cash or merchandise prizes, or premiums, and at this juncture have no intention of doing so." (Memorandum No. 89; Exhibit 577)

These decisions in respect of premiums are also reported in the minutes. Despite the explanation advanced it is strange that no protest was made by Quaker in regard to the allegedly incorrect report of the agreement of June 26, 1947.

The agreement with respect to private brands has also been in effect for several years, although it was contended in oral evidence by a representative of Quaker that his firm is packing flour under private brands. As with premiums, the objection to private brands by parties to a price agreement is that they are conducive to price cutting, thereby affecting the stability which a price agreement is designed to achieve. Usually the product sold under the private brand name is the same product as that advertised and sold under the manu-

facturer's brand or name. The private brand generally sells at a lower price than the manufacturer's brand and competes accordingly, thereby affecting the price and volume of the manufacturer's advertised brand or brands.

As with the principal agreements relating to uniformity of price there were times when there were breaches of these subsidiary agreements by individual mills or general breaches involving the majority of the members. Such breaches appear to have been regarded seriously by the members and in such cases efforts were made to secure adherence.

## 2. Period Prior to Government Price Control

In this period price structures for Ontario, Quebec and the Maritime Provinces were established by the Executive. Typical of these was the structure set out in a memorandum entitled "Decisions arrived at at Executive Meeting April 5th on suggestions submitted by Ontario Sales Managers following meeting in Montreal, April 4th, 1939". In this memorandum the prices to the various classes of trade are set out as follows:

"The following differentials governing sales to the various classes of trade were unanimously agreed to. Prices mentioned are subject to confirmation:

### PROVINCE OF ONTARIO:

#### BAKERS:

Bakers in Ontario .....	\$3.30	2nd pat jute net cash track
xBakers in Toronto-London-Hamilton-Windsor-Ottawa .....	3.40	" " " " " delv'd
xBakers at all other points .....	3.50	" " " " " "

xSubject to allowance of 10 cents per barrel if called for.

#### JOBBERs: (In defined centres)

2nd Pat. Jute. net cash track .....	\$3.30
2nd Pat. Cotton " " .....	3.50
Top Pat. Cotton " " .....	4.15

#### DEALERS: (In mixed or pool cars)

2nd Pat. Jute. net cash track .....	\$3.55
2nd Pat. Cotton " " .....	3.65
Top Pat. Cotton " " .....	4.30

#### RETAIL TRADE:

2nd Pat. Cotton net cash track, delivered .....	\$3.85
Top Pat. Cotton " " " " .....	4.50

### PROVINCE OF QUEBEC:

BAKERS: (2nd Pat. Jute)	Island of Montreal	Quebec City and District
F.O.B. track or warehouse.....net cash.....	\$3.40	\$3.40
Delivered in 100 bags or more " " .....	3.45	..
Delivered in less than 100..... " " .....	3.50	..
Delivered—any quantity..... " " .....	..	3.45
JOBBERs: (In defined centres) .....	\$3.40	2nd Pat. Jute. net cash track
BAKERS: Located at other points than named above .....	3.50	" " " " " "
DEALERS: .....	3.60	" " " " " "
Differential for 98's Cotton over 98's Jute .....	10 cents barrel	
Differential for Top Patent over 2nd Patent .....	50 cents barrel	



## LEGITIMATE STORAGE POINTS:

Chicoutimi  
 Levis  
 Quebec  
 Rimouski  
 Riviere du Loup  
 Ste. Anne des Monts  
 Sherbrooke  
 Sorel  
 Three Rivers  
 Chandler

at which points the maximum storage allowance shall be 10 cents per barrel in return for services rendered.

It is distinctly understood that mills not storing flour in warehouses located at the above points, which may be owned or operated by purchasers of flour, shall sell such buyers at the established basis applicable to the class of trade in question.

## MARITIME PROVINCES: (Basis St. John freights)

Wholesale Jobbers .....	\$4.30	Top Pat. Cotton net cash track
Jobber-Dealers .....	4.40	" " " " " "
Mixed-car buyers .....	4.50	" " " " " "
Retailers .....	4.70	" " " " " delv'd

## BAKERS:

Benn's, Moirs' and O'Malley's—Halifax	\$3.50	2nd Pat. Jute net cash track
Other carlot bakers .....	3.60	" " " " " "
All other bakers .....	3.70	" " " " " "

Wholesale jobbers are defined as those mentioned in the 25 cent Maritime Jobbers' list issued November 15, 1938; and jobber-dealers are those listed in the 10 cents category on the same list.

Jobbers shall be invoiced at the net amount—either \$4.30 or \$4.40 as the case may be. In other words, invoices must not show any reduction for jobbers' discount.

Differential for Top Patent over 2nd Patent ..... 50 cents barrel."  
 (Exhibit 473)

These structures and prices were subsequently made effective at the Executive meeting of July 21, 1939, as reported in Memorandum No. 38:

## "Price Basis:

It was understood and agreed that the structural set-up and prices approved in meeting April 5 1939 would become effective immediately." (Exhibit 441)

The structures were also varied from time to time, as may be illustrated by the following extract from Memorandum No. 41 of the Executive meeting of October 8, 1939:

## "Maritime Bakers:

It was pointed out in connection with the schedule pertaining to the Maritime Provinces that those coming under the category of 'Other Carlot Bakers' are enabled to purchase their flour requirements at 10 cents per barrel cheaper than the Wholesale Jobber, and thereby could sell, and have sold, Wholesale Jobbers at a lesser price than mills.

In the circumstances it was agreed that hereafter the schedule shall read:

'Benn's, Moirs' and O'Malley's—\$4.65 2nd pat Jute net cash track  
 All other bakers.....— 4.85 " " " " " " ,

The feeling was expressed that there is no likelihood of the larger bakers selling to jobbers." (Exhibit 454)

It will be noted from the foregoing examples of agreements on price structures that an essential feature was the scale of prices for different classes of customers. The effective application of the price agreements necessarily involved common

action with respect to the classification of different buyers. Agreements upon these classifications were reached separately for the Ontario, Quebec and Maritime Provinces to meet the differing conditions in those areas.

Prices within the structures were varied from time to time at meetings of the Executive or of Sales Managers' committees. For example, in Memorandum No. 28 of the Executive meeting of July 13, 1938, under the heading of "Report of Sales Managers", the following agreement is set out:

"The following minimum prices were established—mills pledging themselves to adhere rigidly thereto:

Quebec .....	\$5.75	per barrel 98's jute, Second Patent net cash track.
Ontario.....	\$5.65	do do
Maritime Provinces .....	\$6.75	per barrel 98's cotton, Top Patent, net cash track.

In connection with the Maritime Provinces, the secretary was instructed to circularize the members, calling attention to the fact that the \$6.75 price is applicable only to large jobbers, as well as bakers in Halifax, Saint John and Dartmouth; smaller jobbers to be sold at the spreads indicated in the Maritime Jobbers' list. The price to Dealers to be \$7.00 net." (Exhibit 577)

New agreements were entered into from time to time. At the Executive meeting of July 30, 1940, a special committee was appointed to consider ways and means of arriving at a plan of operation for the coming crop year. The committee met on July 31, 1940 and among other things recommended that any agreement arrived at should be firm and binding on all parties for one year and that there should be a stabilized price throughout Canada. Subsequently, these recommendations were considered at the Executive meeting of September 10, 1940, at which, among other things, the following agreement was entered into, as set out in Memorandum No. 51:

"Following considerable discussion it was unanimously agreed that prices shall be stabilized at \$4.10 in Ontario, \$4.20 in Quebec, and \$5.10 top patent cotton in the Maritime Provinces—effective immediately, with all pending deals off. Flour sales to be limited to 30-day shipment. Increases in flour prices to be in relation to carrying charge and the millfeed price situation. Present structural set-up for various classes of trade to be maintained." (Exhibit 572)

Where breaches of agreements by price cutting occurred, efforts were made to secure adherence by re-affirmation of the agreement and sales managers would be instructed to adhere thereto. This may be illustrated by reference to Memorandum No. 57 of Executive meeting of March 19, 1941, wherein it is stated:

"It was unanimously agreed to re-establish affirmatively the present minimum bases on flour and that further consideration thereof shall be given not later than March 31; present Jobber minimum prices being—Ontario \$4.20 net cash track 2nd patent jute; Quebec \$4.30 net cash track 2nd patent jute or cotton; Maritimes \$5.30 net cash track Top patent cotton—with established differentials applying to other classes of trade." (Exhibit 477)

Subsequently, on March 20, 1941, a notice was sent out by the Secretary addressed to Sales Managers Maritime Provinces reading in part as follows:

"This will confirm instructions received by you yesterday from your Executive representative to the effect that the present minimum bases established for the Maritime Provinces must be rigidly observed and that there positively must be no bookings at less than the prescribed minimum bases, as follows: . . ." (Exhibit 489)

The notice then set out the prices to various classes of trade within the structure. Similar notices were sent to Sales Managers Province of Quebec and to Sales Managers Province of Ontario.

In the period prior to government price control the wheat market fluctuated and it was not often possible to wait for meetings to establish price changes in the structures. It was stated in evidence that price changes were generally on the basis of a variation of ten cents per barrel in the price of flour for each variation of two cents per bushel in the price of wheat. These changes, however, were not generally automatic, the usual method being for the Secretary to communicate with the members and if agreement were reached the price of flour would be increased or decreased accordingly. For example, on December 11, 1940, the Secretary wrote to R. E. Cutting (Quaker), D. I. Walker (Western Canada) and C. E. Soward (Maple Leaf), as follows:

"Mr. Henderson [Robin Hood] reminds me that upon the occasion of the fixing of the new agreement on September 10 the price of 2 Northern Cash Wheat was 70- $\frac{3}{4}$  cents and the Ontario Bakers' price was set at \$4.10 jute or cotton, subsequently reduced to \$4.00 jute and \$4.10 cotton, and advanced to \$4.10 jute and \$4.20 cotton on the 6th instant.

Mr. Henderson points out that the advance effected on the 6th instant was to take care of increased costs by virtue of all-rail freights, and that with 2 Northern Cash Wheat today 72 $\frac{1}{2}$  cents prices should be advanced 10 cents per barrel.

I have not discussed this matter with the other mills in Montreal, inasmuch as it is rather late, but Mr. Henderson feels that if the market holds tomorrow we should be up 10 cents per barrel.

Might I ask if you will be good enough to favour me with your views by telegraph 'collect' upon receipt of this note?" (Exhibit 489)

Mr. Soward replied by telegram on December 12, 1940:

"In view weaker market today think suggested ten cent advance should be deferred Western agree." (Exhibit 489)

For a short period a different basis for price changes was established, as set out in Memorandum No. 38 of Executive meeting of July 21, 1939:

*"Price Changes:*

Present prices are taken as being promulgated on No. 2 Northern Cash Wheat 50 cents per bushel, and shall advance 15 cents per barrel for each 2 cents per bushel advance up to 60 cents; and shall be reduced 10 cents per barrel for each 3 cents per bushel decline in the market; always making allowance for millfeed changes." (Exhibit 441)

The reason for this change is outlined in a letter of July 24, 1939, from C. H. G. Short (Lake of the Woods) to G. H. Booth of the Winnipeg office:

"I also managed to sneak a gentle suggestion over, which was adopted—that with every 2 cents upward movement until the No. 2 wheat reached the 60 cent price the price should be advanced 15 cents and that price should be reduced 10 cents per bbl. only on decline of 3 cents per bushel. This arrangement, I hope, will mean that with movement in the market we will get in an even better position than the \$3.30 price legislated." (Exhibit 667)

When price changes were agreed upon, members outside of Montreal were generally informed of these changes by telegram in the first instance. From time to time when there were price changes or variations in the structure the Secretary made up price schedules setting out prices to the various classes of trade within the structures, which were then forwarded to the members. These schedules were prepared separately for Ontario, Quebec and the Maritime Provinces. For example on July 21, 1939, when structures and prices previously agreed upon were to come into effect, price schedules were distributed by the Secretary. In his evidence the Secretary stated that the prices set out in the schedules were obtained from Lake of the Woods, it being understood by the members that these were the prices which that company would quote.



### 3. Period of Government Price Control

With the introduction of government price control in December 1941, ceiling prices for each member company became the highest prices at which sales were made by it during the basic period September 15 to October 11, 1941. During that four weeks' period some of the members had not adhered closely to the price agreements: consequently many sales had been made at other than list prices, with the result that the ceiling prices of the Association members were not uniform.

After controls were imposed in December many members sold below their respective ceilings. This was due in part to increased export business which enabled individual companies to reduce domestic prices in their efforts to increase domestic volume. Under these conditions it became increasingly difficult to reach a satisfactory agreement on uniform prices.

Commencing early in 1942, however, continual efforts were made by the members to establish uniform prices. Meetings of the Executive were held and correspondence was carried on among the members with this end in view. These efforts were reflected in the following two extracts from "general sales reviews" which C. E. Soward (Maple Leaf) prepared for the officers of his company:

*January 31, 1942*

"Efforts were made this week in Ontario to stabilize bakers' prices at a better level and some progress was made. However, Robin Hood are not willing to co-operate on the same basis as the other mills and simply tell us that they are not going into a conference but that they will follow our prices if they find all mills have advanced. This is unsatisfactory, as naturally the mill that is dragging or putting in the advance later than their competitors has the advantage." (Exhibit 489)

*June 12, 1942*

"... now that the export business has been so drastically reduced, higher prices in the domestic market are inevitable. Unless export business picks up it will certainly be necessary for the mills to come to some agreement to maintain ceiling prices and we believe efforts will be made along this line shortly." (Exhibit 489)

On October 5, 1942, at an informal meeting of the Executive Committee, the following recommendations, among others, were made for submission at the next Executive meeting:

*"Uniform Flour Ceilings:*

It was realized that the first step to be taken in respect of correcting certain conditions within the industry, insofar as our members are concerned, was to petition the Flour Administrator to establish uniform ceilings on flour for the different categories of trade, based on the highest ceilings which any mill could establish, and which would constitute a uniform price. The next step considered necessary was a guarantee by all mills to advance to, and maintain their prices at, the ceilings established.

In this respect, however, the view was expressed that perhaps all mills could not sell at the same price in all sections of Eastern Canada, and as a means of overcoming that difficulty it was suggested that any mill would have the privilege of declaring, in meeting, its intention to sell (in territories designated by the mill) at a discretionary price of 10 cents per barrel under the uniform prices set by the Flour Administrator." (Exhibit 577)

While such a submission was made to the Administrator, uniform ceilings were not established by the Wartime Prices and Trade Board.

Establishment of a uniform structure and prices was finally agreed upon, however, later in 1942, in the Province of Quebec. At a meeting of Quebec sales managers on November 2 a proposed new selling structure and prices were set up. In the meantime temporary minimum prices were established while sales managers consulted with their executives to ascertain whether the proposed new structure would conform with their price ceilings. (Exhibit 717). Subsequently, on November 6, the Quebec sales managers agreed upon minimum prices for the

various classes of trade within the Quebec structure. Apparently the prices under the proposed structure of November 2 could not be complied with by all members so as to conform with their price ceilings, as the prices agreed upon at the meeting of November 6 were slightly lower than the prices first proposed. In a circular of November 7, 1942, from the Secretary and addressed to Quebec Sales Managers, the agreement is set out as follows:

"Please find attached list of Distributing Centres in the Province of Quebec agreed upon in meeting yesterday.

It will be noted that Ste. Claire and St. Isidore (Compton County) have been added to the list, and that St. Agapit and St. Hermas have been deleted.

At yesterday's meeting it was unanimously agreed—

1. That the lowest price at which flour shall be sold is \$4.20 per barrel 2nd Patent, net cash track, and that this price shall apply to—

- (a) Jobbers, Dealers and Baker-Dealers located at Distributing Centres;
- (b) All buyers of straight carloads of flour in one shipment;
- (c) Bakers on the Island of Montreal, as well as Bakers in Three Rivers, Quebec City & District, and Valleyfield;

2. That the lowest price at which buyers at legitimate storage points would be sold shall be \$4.20 net cash track, even though a storage allowance is paid.

3. That all other buyers shall be sold at not less than \$4.30 per barrel 2nd Patent, net cash track.

4. Sales of flour and millfeed shall be made for prompt delivery or shipment only—no bookings.

5. Lake-and-rail arbitraries shall be exacted." (Exhibit 712)

With respect to the Maritime Provinces no definite agreement appears to have been arrived at until 1943, although efforts were made to do so. For example on February 3, 1943, a circular letter was addressed by the Secretary to representatives of Lake of the Woods, Maple Leaf, McDonald and Robb, Ogilvie, Western Canada, Quaker, Robin Hood and St. Lawrence, reading in part as follows:

"Acting upon the suggestion advanced by one of the members that there ought to be a common basis established in the Maritime Provinces, I write to ask if you will be good enough to advise by return mail whether you would agree to adhere to the following:

Wholesale Jobbers (as defined)	—	\$5.00	Top Patent net cash track
Jobber-Dealers	—	5.10	Top Patent net cash track
Mixed-car Buyers	—	5.20	Top Patent net cash track
Retailers	—	5.40	Top Patent net cash track

Basis St. John freights." (Exhibit 489)

Subsequently, on February 18, 1943, a further circular was sent out by the Secretary in which it was stated:

"The nature of replies received in answer to Circular dated February 3rd would indicate that there is no unanimity of opinion in respect of the suggestion set forth in the aforementioned circular pertaining to the Maritime Provinces.

.....

In the circumstances perhaps, for the time being, it would be advisable to hold to a minimum of \$5.00 for the large jobbers." (Exhibit 489)

In Memorandum No. 78 of the Executive meeting of October 13, 1943 (Exhibit 577) it is stated that the Chairman of the Ontario-Maritime Sales Managers' Committee undertook to discuss with members the question of raising selling prices in Eastern Canada, particularly in the Maritime Provinces, since prices were below ceiling levels. Subsequently, on October 25, a meeting was held in Halifax of representatives of Lake of the Woods, Maple Leaf, Ogilvie, Western Canada, Quaker, Robin Hood, St. Lawrence and Lakeside, although Lakeside was not then a member of C.N.M.A. According to the report of this meeting (Exhibit 560) agreement was reached upon prices to the various classes

of trade based on the Wholesale Jobber carload price of \$5.00 per barrel, Saint John. Finally, on April 18, 1944, a meeting of Sales Managers of the companies enumerated above was held at Moncton, New Brunswick. At this meeting a structure and prices for the Maritime Provinces were agreed upon and customers classified within certain branches of the structure. (Exhibit 563). Meetings were held from time to time thereafter for the purpose of reviewing and varying the structure where necessary.

In Ontario there appears to have been difficulty at first in arriving at an agreement covering prices throughout the province and the practice followed was to agree upon prices with respect to particular areas. For instance, on January 29, 1943, the Secretary addressed a circular letter to representatives of Lake of the Woods, Maple Leaf, McDonald & Robb, Ogilvie, Western Canada, Quaker, Robin Hood and St. Lawrence in part as follows:

"Would you please be good enough to indicate by return mail whether you would be willing to work on a basis of—

- (a) \$4.20 net cash track to points in Northern Ontario which, during the lake-and-rail season, take a basis of all rail rates;
- (b) \$4.30 net cash track in the Abitibi District (as defined), with the exception of Messrs. St. Onge at Amos and various branches, and Messrs. Mercier at La Sarre who would be sold at \$4.20 net cash track." (Exhibit 489)

As the members were not in agreement a further circular was addressed to representatives of the above companies, excluding McDonald & Robb and St. Lawrence, on February 3, 1943, setting out a counter proposal. Subsequently, on February 10, a circular letter was addressed to representatives of the companies to which the circular of February 3 had been addressed and stated in part:

"With reference to Circular dated February 3rd—please be advised that all members being in agreement with the suggestion set forth therein, the following basis shall apply effective tomorrow, February 11, 1943:

*Flour—Northern Ontario:*

\$4.20 per barrel, 2nd patent, net cash track, to points in Northern Ontario which, during the lake-and-rail season, take a basis of all-rail rates.

*Flour—Abitibi District:*

\$4.30 per barrel, 2nd patent, net cash track, with the exception of Amos, Rouyn, Val d'Or, La Sarre, Senneterre, Malartic, Cadillac and Ville Marie at which points the price shall be \$4.20 net cash track." (Exhibit 489)

The agreement with respect to these areas was varied or reaffirmed from time to time thereafter by correspondence through the medium of the Secretary's office. While Sault Ste. Marie was not considered as being included in the Northern Ontario district, agreement was reached upon price for sales in that locality.

That agreement was finally reached upon prices at which sales were to be made to bakers in other parts of Ontario is indicated by the following correspondence. On November 18, 1943, N. H. Campbell (Lakeside) wrote to the Secretary of the Ontario Flour Millers' Association, stating in part:

"It has been called to our attention, on several occasions, that while The Canadian National Millers' Association have agreed to maintain ceiling prices for domestic flour in all cases, and have set what these ceiling prices would be for the bakers in Ontario, there are, however, some exceptions." (Exhibit 527)

The letter then went on to complain that two members of the C.N.M.A. had cut the price to two bakers in the Niagara Peninsula and requested that a complaint be lodged with the C.N.M.A. This was done and on November 29, 1943, the Secretary replied to the Secretary-Manager of the Ontario Flour Millers' Association in part as follows:

"Following consultation with the mills involved I am able to assure you that any difficulties which may have been experienced probably were the result of some misunderstanding; and that 'everything is lovely and the goose hangs high'." (Exhibit 489)



There is no direct evidence from available memoranda or minutes of meetings to determine whether agreement was reached upon prices for the entire structure in Ontario in this period. There is no doubt, however, that the members of the Association were working closely together. For example, H. J. Inman of Western Canada (Toronto) wrote the Secretary on November 2, 1944, as follows:

"I am told that a meeting of the Executive was held around October 18th at which it was decided that Ontario Sales Managers would be advised to form a committee, appoint a chairman, and sort of get the price structure in the Province of Ontario put on a sound foundation.

Would you be good enough to let me know what instructions were issued, because none of the Milling Companies' Managers here have heard anything in the way of direct instructions." (Exhibit 458)

In replying on November 4, 1944, Mr. D. E. Murphy pointed out that there had been an Ontario-Maritime Sales Managers Committee, that the Maritime managers resident in the Maritime Provinces had some months previously formed a committee which was already functioning, and that it was deemed advisable that the Ontario Division should be set up in a similar manner. He went on to say:

"As and when a Chairman of the Ontario Division is appointed, he will deem it advisable, I presume, to call the Ontario Managers together from time to time and dispose of whatever evils or pit-falls may be evidenced in that Province . . .

There wasn't any suggestion that the levels obtaining in Ontario need adjusting. But if difficulties are being experienced along any line whatsoever, then the Committee could be called together and straighten things out without the necessity of calling in those connected with the Maritimes, . . ." (Exhibit 458)

Although sporadic outbreaks of price cutting occurred in different sections of Ontario, Quebec and the Maritime Provinces at various times, the agreements upon price which have been illustrated in this section continued in effect with some variations during the remainder of the period of government price control.

In the correspondence of some of the members it was suggested that the price cutting in this period resulted from the tax on excess profits. For example, in a letter of August 28, 1943, to T. J. Williams (Robin Hood), Moose Jaw, M. A. Crinkley of Minneapolis said:

"It should be clear to you that the moment competitors have earned their standard profits and knowing they can not earn and retain any more than their standard profits, they are faced immediately with the question of either turning over 100 per cent of their excess profits in line with Circular No. 1, or cutting domestic prices in order to establish good brand trade which will create good will for them in the future. If they are foolish enough to do this, it simply means they make all the money the law will permit them to retain, and charge the price cutting to what would otherwise go to the Commodity Prices Stabilization Corporation." (Exhibit 353)

He went on to cite as an example the fact that one of the members was operating at a loss in the mining district of Northern Ontario and Quebec.

In his letter of May 18, 1945, to W. P. Noble (Quaker), Saskatoon, J. G. Wharry, Peterborough, said in part:

"... the mills have an arrangement in the East to cover bakers' business but with our Montreal cost on second patent today \$4.62 in jute and flour actually selling at \$3.90 in jute, 72 cents under our cost, I think you can figure out the agreement doesn't mean very much because if we went much lower we would be selling under the price of the wheat.

The unfortunate part of the whole thing is that most of these mills are very badly in the excess profit bracket and they do not care if they sell flour at \$2 a barrel." (Exhibit 228)

In his evidence Mr. Noble said he did not find that in Western Canada the millers, because of the tax on excess profits, were prepared to sell flour at a loss in order to create a market.

#### 4. Price Discretions

From time to time the prices agreed upon by members of the Association were subject to a "discretion". In other words both a list price and a minimum price were established, the former being in effect an asking price, while the latter was the minimum price at which sales could be made under the agreement.

The reasons for these discretions are outlined in a circular letter of October 16, 1936, from the Secretary to Ontario and Maritime sales managers, containing a résumé of deliberations at a meeting of October 13, 1936:

"The meeting recommended the continuance of price discretions, for the following reasons:

1. They act as a buffer in the case of a rapid advance;
2. They permit some mills to secure a better margin on a well-established brand in certain quarters;
3. It is considered a good trading margin with respect to those buyers whose practice is to seek a lower than the asked price." (Exhibit 581)

There was also a fourth reason, to meet competition of mills which were not members of the Association. This will be discussed in more detail in a subsequent section dealing with small mill competition.

Illustrations of agreement on these price discretions are found in memoranda of Executive Meetings:

"It was agreed by all members that no flour would be sold below 20 cents per barrel under prevailing list prices. Instructions to that effect were telegraphed to all offices over the signatures of the various Executive representatives."

(Memorandum No. 33, December 14, 1938; Exhibit 472)

"It was moved, seconded and unanimously agreed that present list prices would remain unchanged but that a discretionary shade of not more than 30 cents per barrel under list prices is permissible on sales to all classes of trade in Ontario, Quebec and the Maritime Provinces, which shall constitute the lowest selling levels."

(Memorandum No. 44, January 18, 1940; Exhibit 577)

When price discretions were permissible the price schedules issued by the Secretary usually contained a notation such as, "Minimum Basis 20 cents Less" depending on what the discretion happened to be at the time. When discretions were cancelled the members were notified by the Secretary. For example when issuing price schedules on July 3, 1941, the Secretary sent a circular to sales managers in which it was stated:

"You will find enclosed Domestic Schedules showing new prices in effect today. These are MINIMUM prices—the discretion having been cancelled." (Exhibit 489)

The system of price discretions applicable to all classes of trade does not appear to have been used during the period of government price control, although there is evidence of agreement upon discretionary prices applicable to specific accounts in order to meet competition from non-member mills.

#### 5. Package Differentials

As has already been illustrated, prices within the various structures were established on the basis of one barrel of flour packed in two 98 pound bags. The basic type of packaging might be jute, cotton or either cotton or jute depending on the circumstances. Since flour is packaged in different sizes and types it was necessary as part of the system of control over prices to establish, for the various types and sizes of packaging, fixed price differentials over or under the basic type and size.



Agreements upon these price differentials were reached at meetings of sales managers and of the Executive. For instance, in a letter of November 23, 1939, to R. A. Henderson (Robin Hood), C. E. Soward (Maple Leaf) reported on a meeting of Ontario sales managers as follows:

"In regard to package differentials it was decided at yesterday's Sales Managers' meeting not to give any publicity to the fact that cotton is cheaper than jute but to maintain the present differential [cotton 10 cents over jute] each mill simply persuading their baker customers to take cotton at the present price where they considered it in their interest to do so. Your suggested method of handling the situation was considered very good but we thought perhaps less reference to the situation in respect to jute and cotton prices would be better and will simply leave it to the salesmen to get permission from the bakers to take deliveries in cotton on the plea that there is a temporary scarcity of jute.

It is the opinion of the Sales Managers that there would be a considerable upset in our arrangements if jobbers were to receive their flour in cotton bags at the same price as jute. For instance, there is a spread of 75 cents per barrel at present between the jobber's jute price for second patent and the jobber's top patent price and no one wished to do anything to upset the present setup.

In regard to the differentials on other packages, examination of costs revealed that these were also in our favour at the present time and there was no particular object in disturbing them. Consequently, for the time being no change appears to be necessary." (Exhibit 489)

When changes were made from time to time package differential sheets were issued by the Secretary to representatives of the member companies, or in cases of a change in an individual item, he might send out a circular letter apprising the member of the change. For example, at a meeting of the Executive on March 29, 1944, as reported in Memorandum No. 81, the following decision was reached:

"The meeting unanimously favoured the application of the small-package differentials over the 98's cotton basis, and Messrs. Groom and MacGregor were appointed to review the situation and instruct the secretary with respect to promulgation of a revised differential sheet." (Exhibit 577)

Subsequently a new package differential sheet was issued by the Secretary on April 1, 1944 (Exhibit 604).

In a letter of April 4, 1944, to A. G. Watson of Halifax with respect to the company price list, D. A. Campbell (St. Lawrence) said in part:

"The reason we drew up the price list as we did, was to show clearly in what size package the various flours were put up, but the way you have the package differentials would do the trick equally well and it saves a good deal of space.

I agree with you that it is a good idea to leave off the differential for wooden barrels, but, actually, I am afraid we must stick to a differential of Seventy Cents over cottons for the full wood and \$1.40 for half wood as this is the ceiling differential. I am enclosing herewith the last list from the Association on differentials and you will note there are several changes, and, as the mills have all agreed to these, and they conform to the ceiling, I think we can put them into effect at once." (Exhibit 565)

## 6. Grade Differentials

Basic prices within the various structures were generally established with reference to specific grades of flour. In addition price differentials were agreed upon for the main grades of flour sold in the domestic market. Generally these price differentials were established at meetings of the Executive or Sales Managers and were also varied from time to time. For example, in Memorandum No. 24 of Executive meeting of March 9, 1938, under the heading of "Report of Sales Managers" there is the following:

"Grade Spreads: The majority of Sales Managers recommended an increase in the Top Patent differential over Second Patent from 40 cents to 50 cents per barrel due to the low return on Clears and Low-grade flour.

They further recommended, with one exception, to widen the spread between Second Patent and Export Patent to 20 cents per barrel—primarily because it would help disposing



of Clears which are not moving very fast; and from a milling standpoint, during the greater part of the year it is better to make an 'E' grade than 'D'. This recommendation was coupled with the understanding that 'E' grade shall have a minimum Ash content of .52.

The arguments against widening the spread between 'D' and 'E' were that it would have the tendency to promote the sale of 'E' grade which the mills do not wish to do; and that it is easier for small mills to make an 'E' grade than a 'D'.

There being no unanimity of opinion on the part of the Executive with respect to the above recommendations, present grade spreads remain unchanged." (Exhibit 577)

In a letter of December 19, 1944 to W. L. MacGregor (Lake of the Woods), Montreal, G. R. MacGregor of that company's Toronto office, in reporting a meeting of Ontario Sales Managers, said:

"The question of spreads between second and first patent flour was also discussed, and it was agreed the minimum between second and first patents would be 40 cents per barrel for first patents over the price of second patents. The discussion developed the fact that Lakeside were asking 25 cents per barrel over, Ogilvie's in one case 30 cents over, and Robin Hood 35 cents. These spreads were not the general rule, but it was freely admitted that some bakers on the open and preferred list were taking a portion of first patent flour and paying for this grade on the basis of spreads as mentioned above." (Exhibit 709)

The various differentials were not always the same for each province at the same time and there have been variations with respect to specific areas in the same province.

In the period when price schedules were issued by the Secretary, the grade differentials were generally shown on these schedules.

## 7. Trade Classifications

Another matter of importance in the establishment of the price structures in Ontario, Quebec and the Maritime Provinces was the classification of customers deemed to constitute the jobbing trade and therefore entitled to the prices and discounts agreed upon for that class of trade. Agreements upon these classifications were reached separately for each of the above sections.

(1) ONTARIO AND QUEBEC. The jobber lists were established between 1936 and 1938. Certain localities were agreed upon as distributing centres with provision that the jobber price was to be confined to legitimate jobbers in those centres. The first lists were set up by the Ontario and Quebec Sales Managers Committees. In July 1939, it was decided that further changes in the lists could be made only with approval of the Executive.

While this system of classification appears to have continued in effect in both provinces up to the introduction of government price control, the available evidence does not indicate whether it remained in effect in Ontario during the control period. With respect to Quebec, agreement upon a structure and prices could not be reached in the early control period, and the system presumably was inoperative for a time. On November 6, 1942, however, agreement was reached (Exhibit 712) on a list of distributing centres and a price established for jobbers and other classes located at these centres.

(2) MARITIME PROVINCES. In the Maritime Provinces classification as a jobber did not depend upon location at a distributing centre but upon acceptance as a jobber. To qualify as a jobber, firms had to be carrying on a legitimate jobbing business and, generally, to have made minimum purchases of 3,000 bags (1,500 barrels) or 7,000 bags (3,500 barrels) of flour from members of C.N.M.A. A different scale of discounts applied to the two categories and in order to establish their classification, jobbers were generally required to submit purchase records to show the volume of their purchases of flour in a particular

crop year. As the discount allowed was usually dependent upon the volume of purchases in the previous crop year, an element of arbitrariness was introduced for those jobbers whose volume of business changed in the subsequent crop year. The agreement on classification of jobbers generally provided that discounts were not to be retroactive, although on some occasions they were made retroactive to September 1 of the new crop year.

In the period prior to 1938, discounts of 10 cents, 15 cents and 25 cents per barrel, on the volume of purchases, were agreed upon. At a meeting of Maritime Sales Managers held in Moncton on September 21, 1938, the 15 cents commission was discarded. In reporting this decision to his head office in a letter of September 24, 1938, A. G. Watson (St. Lawrence), Halifax, said in part:

"The idea of the meeting was to put all legitimate jobbers on the same basis, and for that reason there will be more accounts in future entitled to the 25 cents commission because under the previous list some sections only got 15 cents. Then the idea was to give what we may call the lesser jobbers 10 cents only but the retailer must pay full list price. The 15 cents list will be discarded and in future there will only be a 25 cent and 10 cent list and the latter will be rather small compared to what it used to be."

(Exhibit 565)

At the Executive meeting of July 21, 1939 (Memorandum No. 38, Exhibit 441) it was decided that in future no changes or additions could be made to the list unless approved by the Executive. In 1940 this ruling was changed by providing that any additions to the list must be substantiated by sending invoices to the Secretary proving the requisite minimum purchases in the preceding crop year.

From time to time thereafter the list was reaffirmed or varied and variations were made in the amount of the commissions or discounts.

The available evidence does not indicate whether this system of classification was immediately continued under government price control or whether it became inoperative for a time. On October 18, 1943, however, the Secretary issued an up-to-date list of wholesale jobbers and jobber dealers, the latter being those receiving the smaller discount. Until 1944, classification as a jobber remained dependent upon the volume of purchases from members of C.N.M.A. At a meeting of Maritime Sales Managers held on April 18 of that year and attended by representatives of Lake of the Woods, Maple Leaf, Ogilvie, Western Canada, Quaker, Robin Hood, St. Lawrence and Lakeside, which was not then a member of C.N.M.A., agreement was reached, among other things, upon a revised list of wholesale jobbers and jobber dealers. It was also agreed that if Lakeside followed Association prices, purchases from it would be included in assisting a customer to qualify as a wholesale jobber or jobber dealer as the case might be. This agreement is reported in the following extract from a copy of a letter dated April 29, 1944, addressed to E. W. Fraser (Lakeside), Halifax, which was found in the files of N. H. Campbell (Lakeside), Toronto:

"... Today, however, I have had word from the Chairman of the National Miller's Assoc. Mr. D. Walker of the Western Canada Flour Mills, that all Ogilvie want is my assurance that our Company will carry out the price arrangements made at the Moncton meeting. Mr. Walker assures me that Lakeside flour will be pooled with flour from National Mills to make up the total sales qualification of Jobbers. He has promised me that all salesmen of the National Mills will be particularly advised of this, so as to prevent any sales talk against our products by any of their men.

I have given Mr. Walker my word that we will play ball with them and thoroughly try out the agreement. I advised him that I had put it up to you to see that our salesmen carried out the price agreement in all cases."

(Exhibit 532)

From time to time up to the date of the investigation the list was amended, notices of changes being issued by the Secretary usually by circular letters. There does not appear to have been any change in the minimum purchase qualifications for the two categories during the control period.



### 8. Freight Arbitraries

Another factor of importance in the price structures in Ontario, Quebec and the Maritime Provinces was the addition of the railway freight arbitrary where applicable. Prices were generally established with reference to a Fort William basis and rail charges then added in arriving at the prices set out in the various structures. While the freight rate from Fort William to numerous Eastern points is the same, to other points, usually off the main lines, there is an additional charge described as a freight arbitrary. While the freight arbitraries were railway charges, their non-exaction was an indirect method of cutting price, and agreements were made from time to time by the members to exact these arbitraries, with certain exceptions, which will be discussed in a subsequent section.

Agreements relating to freight arbitraries were generally entered into at meetings of Sales Managers and were reaffirmed or varied from time to time. For example, in Memorandum No. 25 of the Executive meeting of April 12, 1938, under the heading "Report of Sales Managers", the following decision is set out:

"It was agreed that freight arbitraries would be exacted at all points, with the exception of points on the Huntsville, Bracebridge and Scotia Junction Line, and on the Parry Sound Line where competitive conditions exist with respect to Ontario mills."  
(Exhibit 577)

At the meeting of Quebec Sales Managers on November 6, 1942, it was unanimously agreed, among other things, that "Lake-and-rail arbitraries shall be exacted." (Exhibit 712)

From time to time the Secretary would issue instructions with reference to the addition of these arbitraries. For example, in a circular memorandum of July 22, 1939, it was stated in part:

"With reference to flour prices issued under yesterday's date—it is of course understood that all flour and feed prices are basis lake-and-rail freights, and any arbitrary over the lake-and-rail rate must be added.

In the case of Ontario and Quebec the Montreal lake-and-rail rate governs, and in the Maritimes prices are based on St. John lake-and-rail freights." (Exhibit 489)

Owing to variations which would exist in arbitraries during the all rail and lake-and-rail seasons, notices were issued by the Secretary at these times as reminders to the members. For example, the following circular letter was addressed to Sales Managers on December 2, 1938:

"Inasmuch as the all-rail basis of freights is now in effect present prices are taken to be based on all-rail freights, and arbitraries over the all-rail rate must be exacted.

In the circumstances it is no longer necessary to exact the arbitrary of 10 cents per barrel on flour and \$1.00 per ton on feeds in Northern Ontario and the Abitibi district. In other words, the same price applies all over Ontario. Of course, to points taking an arbitrary over the all-rail rate basis the arbitrary must be exacted." (Exhibit 489)

The following circular letter was addressed to members on December 12, 1945:

"With the advent of the lake-and-rail season (the first acceptance expected to be April 15), lake-and-rail arbitraries apply both on flour and millfeeds.

In so far as the Lake St. John District is concerned, as you know during the all-rail season, lake-and-rail arbitraries apply on flour but all-rail arbitraries apply on millfeeds.

However, during the lake-and-rail season, lake-and-rail arbitraries apply throughout."  
(Exhibit 606)



## 9. Agreements on Tenders

Since substantial purchases of flour were made by tender, consultations were held from time to time by members of the association and agreements reached at which quotations were to be made on specific tenders or to particular classes of buyer. These agreements were often entered into at meetings of the Executive or by correspondence through the Secretary's office and sometimes at meetings of sales managers.

Government departments and agencies, both federal and provincial, have been substantial purchasers of flour. At various times since 1936 agreements were made as to prices for such purchasers. Such agreements existed early in 1936. In Memorandum No. 3 of Executive meeting of April 14, 1936, however, under the heading of "Report of Ontario and Maritime Sales Managers' Meeting" it is stated that "The meeting decided that future quotations to Government Institutions would be on the 'open' list." Under the heading "Report on Quebec Sales Managers' Meeting" the following appears: "The meeting recommended that quotations to the Department of Justice be on the 'open' list. This was agreed to." (Exhibit 577). The available evidence does not show how long this "open" basis was in effect but the minutes of meeting of Sales Managers for Ontario and Maritime Provinces held on October 5, 1938, report that:

"Sales to this class of trade [Federal and Provincial Institutions], in Ontario and Quebec, to be 30 cents per barrel under the lowest bakers' basis applying in either Province—BASIS DELIVERED—no allowance for cartage." (Exhibit 489)

Generally, tenders were submitted individually by the different members quoting on the business, but at an Executive meeting of November 9, 1938, it was agreed:

"The meeting thought well of the suggestion whereby future quotations to Federal and Provincial Institutions shall be made direct through the Association on the jobbers' basis, and any business resulting therefrom to be divided pro rata amongst the mills on the basis of the assessment for annual dues.

It was decided to start with Federal Government tenders—mills to advise the secretary with respect to full particulars of the enquiries received who shall then quote the second patent jobbers' basis and state 'quotations are made on behalf of members of the Canadian National Millers Association. If the price is accepted any one of these mills (to be named) may be selected to fill this order'."

(Memorandum No. 32, Exhibit 577)

So far as can be ascertained this system lasted only a few months.

Occasionally, as in 1936, the companies would agree that quotations for some classes of government business would be on an "open" basis. For example, the following decision is reported in Memorandum No. 35 of Executive meeting of February 8, 1939:

*"Quotations to Department of Justice:*

It was understood that future quotations to this class of trade would be on an 'open' basis." (Exhibit 450)

The available evidence, however, records no similar departure since 1939 from the general practice of agreeing, directly or indirectly, on uniform prices for government business.

As occasion required, the basic arrangement was from time to time re-affirmed, modified in the details of operation, and extended to include additional government agencies which became substantial purchasers, such as the Department of National Defence and Munitions and Supply. For example, Memorandum No. 41 of Executive meeting of October 8, 1939, states:

*"Basis for Warships calling at Halifax for supplies:"*

It was agreed that such quotations would be on the basis of the Halifax Wholesale Jobbers' price, delivered. In the event that flour is sold by mills' distributors in Halifax,

said distributors shall be granted a service allowance of 30 cents per barrel upon the mill being furnished with a signed receipt proving delivery of flour to warship.

*Quotations to Dept. of Justice and Dept. of National Defence:*

40 cents per barrel under the delivered basis applicable to Bakers in the principal Ontario centres." (Exhibit 454)

When price changes occurred, out-of-town members were generally notified by the Secretary by telegram which was later confirmed in writing. From time to time schedules were issued by the Secretary setting out prices at which quotations and sales were to be made. For example:

*"Schedule No. 2*

September 18, 1940

Cancelling Schedule No. 1 of Sep. 13/40.

*Warships calling at Halifax for Supplies:*

\$4.14 per bbl. 2nd patent jutes, net cash delivered.

*Provincial Institutions:*

*Federal Institutions:* (Depts. of Justice, Munitions and Supply, etc.)

\$3.70 per bbl 2nd patent jutes, net cash track, Montreal frts.

4.00 " " " " " " " " Saint John "

4.04 " " " " " " " " Halifax "

The above prices to remain in effect until further advised." (Exhibit 520)

When difficulties arose through price cutting by one or more of the members, complaints were often made to the Secretary and efforts made to secure adherence to the agreed prices. For instance, in a circular letter of April 5, 1941 to Sales Managers Maritime Provinces, the Secretary said in part:

"On March 19 you received definite instructions from your respective Executive representatives to the effect, among other things, that the minimum basis established for Steamship Companies, Department of Munitions and Supply, and Warships calling for supplies, namely, \$4.50 per barrel second patent jute, net cash delivered, basis Saint John freights, or \$4.54 basis Halifax freights, was to be rigidly observed.

Early this week it was admitted by one of the members that they had sold to the Department of Munitions and Supply a quantity of flour for delivery at Halifax at \$4.44 . . .

I have canvassed all other members and have their definite assurances since March 19th they have not sold the Department at less than \$4.54.

The purport of this circular is to give instructions very definitely that the above classes of trade are to be quoted and sold at not less than \$4.50 net cash delivered, basis Saint John freights, or \$4.54 net cash delivered, basis Halifax freights, per barrel, second patent jute; and I shall be glad to have assurances from each mill by return mail that this basis shall be maintained." (Exhibit 489)

With the introduction of government price control, agreements upon price continued to be made with respect of this class of business.<sup>1</sup> For instance the following decision is set out in Memorandum No. 67 of Executive meeting of January 20, 1942:

*"Department of Munitions and Supply: Warships: Steamships:*

The meeting reaffirmed prices established for the above classes of trade at Halifax, December 17, namely, Top Patent \$4.94, Second Patent \$4.44, Export Patent \$4.34, jute or cotton, net cash, delivered, basis Halifax freights." (Exhibit 577)

However, on the next day the following circular was addressed by the Secretary to members of the Executive:

"In view of the fact that a sale of flour was made by one of our members on January 20th to the Department of Munitions and Supply at a price which was lower than that agreed upon in meeting of December 17th and reaffirmed at yesterday's

<sup>1</sup> The Orders in Council imposing price ceilings exempted sales to the Department of Munitions and Supply or any agency thereof. However it was the policy of the Department to purchase at the most advantageous price wherever possible.

meeting: Messrs. Robin Hood Mills have today served notice that they no longer can be bound by their agreement to adhere to the prices established with respect to sales to the Department of Munitions and Supply, Warships and Steamship Companies in Halifax." (Exhibit 489)

Again, in a circular letter of September 22, 1942, addressed to members of the Export Committee, the Secretary said in part:

"In connection with the above, it has been represented to me that the Department of Munitions and Supply purchases flour for *domestic requirements*. The Dockyard Bakery at Halifax is cited as one instance.

Naturally, on such sales the rebate shall apply, thereby rendering it necessary to name a price based on 77½ cents per bushel for wheat.

Please be advised, therefore, that quotations to the Department of Munitions and Supply in respect of flour purchased for *domestic consumption*, shall be on the following basis;

	Montreal & Quebec	Saint John N.B.	Halifax N.S.	Sydney N.S.
"E" Grade .....	\$4.20	\$4.50	\$4.54	\$4.60
"D" " .....	4.30	4.60	4.64	4.70
"B" " .....	4.80	5.10	5.14	5.20
net cash, delivered in or ex mill-warehouse."				(Exhibit 565)

In a letter of November 14, 1942, from G. R. MacGregor (Lake of the Woods), Toronto, to his Montreal office, he said in part:

"The Provincial Government, Hospitals Division, are asking for quotation on Harvest Queen and Pastry flour for Orillia. In this connection would advise we received telephone call from the Western Canada Flour Mills this morning saying an agreement had been made amongst all Millers to quote \$4.10 net for "D" Grade and \$4.90 for Pastry Flour. If these quotations are acceptable to you we will complete tender accordingly." (Exhibit 709)

To this W. L. MacGregor (Lake of the Woods), Montreal, replied on November 16, 1942:

"It will be all right for you to quote the Provincial Government, Hospital Division, on the same basis as Western Canada Flour Mills, namely, \$4.10 net cash for Harvest Queen, \$4.90 for Pastry Flour." (Exhibit 709)

With respect to business for Department of Munitions and Supply in the Maritime Provinces, a new system of quotation was agreed upon at the Executive meeting of May 16, 1943, as reported in Memorandum No. 76 of that date:

"Discussion ensued with respect to recent notification to mills that the price of flour in respect of ships' stores business, or at least in respect of quotations to the Department of Munitions and Supply had been decontrolled. Finally it was agreed that in connection with the Department of Munitions and Supply, quotations insofar as Halifax is concerned shall be made in behalf of all members by Mr. A. G. Watson, and by Mr. J. P. Whitney insofar as Saint John is concerned—the orders so received to be distributed in turn to each of the members by Mr. Watson and/or Mr. Whitney in a manner to be determined by them." (Exhibit 481)

This agreement was explained by D. A. Campbell (St. Lawrence) Montreal, in a letter dated May 18, 1943, to A. G. Watson, Sales Manager at Halifax, as follows:

"At a meeting of the Executive of the Millers Association today, the perennial question of prices for ship's stores came up for discussion, and it was the unanimous opinion that you should take over the selling of ship's stores for all of the mills (in Halifax), and that Whitney would perform the same service in Saint John. By 'ship's stores' was meant the quotations to the Department of Munitions and Supply, and did not refer to the supplies for ocean going vessels, for which there does not seem to be a great deal of difficulty.



In other words, the arrangement that was agreed upon was that Murphy would send you, from time to time, the prevailing price for this traffic, and that you would give the orders, in rotation, to the various mills concerned.

Maple Leaf  
Lake of the Woods  
Robin Hood

Ogilvie's  
St. Lawrence  
Quaker Oats

and, possible (*sic*), Lakeside.

The question of a quota for each of the mills came up, and it was decided that it would be extremely difficult to divide the business up on a basis of capacity, and that the best way would be to give the business as it came, equal quantities to all mills, with you having the jurisdiction.

Like a good many matters that are discussed at our meetings, this was not brought to thoughtful completion, and I am afraid that the arrangement is a little loose. However, Murphy will write you, and make the necessary arrangements, and you can try it out and see how it works." (Exhibit 548)

During the oral examination of representatives of the various companies it was stated by some that this system was introduced to meet existing emergency conditions. When orders were placed the flour was generally required by the Department in a hurry, but with the great demand everywhere each company was unable to carry sufficient stocks to meet large emergency requirements. This system was introduced, it was claimed in oral evidence, to make sure that the tenders could be adequately and speedily handled. It was also stated that the member companies were losing money on this particular business, but that it was considered as a war effort and it was therefore up to each mill to accept its share from time to time.

That there was, however, a definite desire to obtain this business and a determined effort to restrict it to certain mills is clearly illustrated by the following exchanges of correspondence.

In a letter of June 1, 1943, to A. G. Watson, the Secretary said in part:

"One of the Mills in receipt of a report from their representatives in the Maritimes, to the effect that the purchasing agent for the Department of Munitions and Supply insists upon having quotations from three mills, otherwise he will take the matter up with the Wartime Prices and Trade Board.

Might I ask if you have heard anything to this effect or whether there have been any repercussions in respect to the new arrangement." (Exhibit 549)

On June 4, 1943, Mr. Watson replied in part as follows:

"In all fairness I feel that you should tell me which Mill it is that has made the above report, so that I could have an opportunity of discussing the matter with their Maritime representative, and I will be glad if you will let me have this information by return mail.

On May 28th, I received the first request for quotations from the Department of Munitions and Supply for 300/98# Paper Bags Vitamin B flour. The Maple Leaf had been drawn to have the first order so I quoted their flour on the basis of \$4.64, St. Lawrence at \$4.91 and some other brand at \$4.84. The Department accepted the low quotation so I handed the business over to the Maple Leaf.

After things get properly started I will quote a high price for the Mills that have already received an order and the one that is next in line will be quoted at \$4.64. I do not look for any trouble with this system.

For your information, yesterday the Department asked for tenders on 300/98# Jutes Second Patent. The business was offered in turn to Lake of the Woods, Ogilvies and Lakeside who could not supply Jute Bags, so it was awarded to Quaker Oats—300/98# Jutes Ivory at \$4.64. I might mention that I would like to have taken this order for the St. Lawrence as the flour was on hand but this firm is at the bottom of the list.

The next order will be offered in turn to Robin Hood, Western Canada and St. Lawrence.

Let me assure you it is my intention to distribute the business as fairly and equitably as possible but I cannot give eight mills an order the same day, but if the different mills will have a little patience in time they will get their proper proportion." (Exhibit 549)

Copy of this correspondence was forwarded by Mr. Watson to D. A. Campbell (St. Lawrence), Montreal with his letter of June 4, 1943, to which Mr. Campbell replied in part on June 7, 1943:

"Thanks for your letter of the 4th. Apparently it was the Quaker Oats Company, and they particularly, as well as the rest of us, do not want to do anything to contravene any combines act, but, of course, in this case, there is no contravention, and I think Murphy has spoken to the Quaker Oats Company on this matter, so that probably you will have no more trouble. I think you are working it to the best advantage of everyone, and I believe they will all come to see this." (Exhibit 550)

Again, in his letter of May 17, 1944, to G. H. Booth, of Winnipeg office, W. L. MacGregor (Lake of the Woods), Montreal said in part:

"... All I can say is that the arrangement we have in Halifax is that one designated party represents all the mills and places all the tenders for flour required by the Department of Munitions & Supply. We have a minimum basic price and this party so juggles the price on each tender that the mill entitled to receive the business quotes the lowest price. A record is kept of the purchases made by the Department of Munitions and each mill gets its share. The allotment is not made on the basis of productive capacity, but simply if there are seven mills interested in the business each mill gets a seventh. The plan is working out very satisfactorily,..." (Exhibit 708)

After this arrangement was entered into, from time to time up to the time of this investigation, circular letters addressed "To Members" were issued by the Secretary setting out prices to be quoted to the Department at various points and explaining the system of tendering in New Brunswick and Nova Scotia. For illustration, reference might be made to Circular No. 260 of September 6, 1947, reading in part as follows:

*"Sales to Dept. Munitions & Supply for Consumption in Canada"*

	Mtl-Que.	St.J.N.B.	Hal. N.S.	Syd. N.S.
'E' grade .....	\$4.20	\$4.50	\$4.54	\$4.60
'D' grade .....	4.30	4.60	4.64	4.70
'B' grade .....	4.80	5.10	5.14	5.20

per barrel, net cash, delivered or ex mill warehouse—any quantity. The 'D' grade price applies as well on Vitamin B Flour, Whole Wheat Flour and Cracked Wheat, and is the grade to be quoted when 'Western Baking Flour' is specified. If flour is supplied in 49's or 98's multiwalled paper bags the price shall be 20 cents per bbl less; and if tenders call for flour packed in double bags, add 35 cents per barrel.

Insofar as NOVA SCOTIA is concerned, quotations shall be named by Mr. A. G. Watson, and by Mr. J. P. Whitney for NEW BRUNSWICK, on behalf of all members. No other person except Mr. Watson or Mr. Whitney is permitted to quote to the Department insofar as N.S. & N.B. are concerned. Orders received shall be distributed to the members, in turn, in the manner determined by Messrs. Watson and Whitney. (Straight Cars to Deep Brook on Wholesale Jobbers basis)." (Exhibit 606)

Insofar as other government agencies and departments were concerned, agreements continued to be made upon prices at which quotations and sales were to be made. For example, in a letter of May 29, 1944, to G. H. Booth, Winnipeg, W. L. MacGregor (Lake of the Woods), Montreal, said in part:

"Glad to hear that the West have adopted a plan similar to what we are using in the East in respect to sales to the Department of Munitions & Supply, Halifax. Hope it will work out satisfactorily for you. Unfortunately, we have not been able to arrange with mills to adopt the same procedure in respect to other Government business, but it is a matter that could well be discussed at the next meeting of Eastern mill representatives, and if any plan is worked out we will be glad to let you know. In the meantime, all mills are adhering to a minimum price for this type of business. It is quite true that this arrangement is not entirely equitable, as for some reason or another some mills seem to get more than their share of the Penitentiary and Asylum business. On the other hand, I do not think this can be attributed to price cutting..." (Exhibit 708)

In addition to the matters already illustrated, agreements were entered into from time to time with respect to tenders to non-governmental purchasers such as railway and steamship companies, Hudson Bay Company and institutions.



## 10. Decontrol

Beginning early in 1947 it was generally anticipated that during the year flour would be decontrolled, i.e., suspended from price control under the Wartime Prices and Trade Regulations. There was considerable speculation in newspaper reports and in the trade as to when decontrol of flour prices would become effective.

The announcement of decontrol of both flour and millfeeds, as well as a large number of other commodities, was made on Sunday evening, September 14, 1947, the effective date being September 15. The subsidy on hard wheat used in the manufacture of flour was also withdrawn, effective at midnight September 13, resulting in an automatic increase in the price of wheat to millers from  $77\frac{3}{4}$  cents to  $\$1.58\frac{1}{2}$  per bushel or an advance of  $81\frac{1}{8}$  cents. On the basis that four and a half bushels of wheat are required in the manufacture of one barrel of flour, this represented an advance in cost of approximately  $\$3.65$  per barrel. It was contended that increased costs over the basic period on such items as bags and labour also had to be taken into consideration in establishing new prices following decontrol.

On September 15, Lake of the Woods, Maple Leaf, McDonald and Robb, Ogilvie, Purity, Quaker, Robin Hood and St. Lawrence all increased the price of hard wheat flour by  $\$4.05$  per barrel and millfeeds by  $\$10.00$  per ton. Lakeside, which sells flour on the decimal packaging system, i.e., two bags of one hundred pounds each constituting one barrel of flour, increased its prices by approximately  $\$2.01$  per bag in Ontario and  $\$2.07$  per bag in Quebec and the Maritime Provinces. Converted to the basis of the one hundred and ninety-six pound barrel these represented increases of approximately  $\$3.95$  and  $\$4.05$  per barrel respectively. Millfeeds were increased by a net amount of  $\$10.00$  per ton.

Subsequently and while this investigation was proceeding there appears to have been a considerable degree of competition in the sale of flour, and sales have been made at substantial reductions from the prices established on September 15. In the same period, however, there were further increases of  $\$12.00$  to  $\$14.00$  per ton in the price of millfeeds which were to some extent an offsetting factor to price reductions on flour.

In the course of the oral examination of representatives of the member companies of C.N.M.A., it was contended that the amount of the advances had not been reached by agreement, although it was admitted by some that prior to decontrol they had discussed with others the increased costs with which they were faced. It was also contended that the amount of the flour increase was not in fact sufficient to cover all increases in costs which had arisen since the basic period in 1941.

With respect to the question of agreement, the following decision reported in Memorandum No. 98 of Executive meeting of March 21, 1947, is significant:

"It was further agreed that the sales managers for Ontario, Quebec and the Maritime Provinces would be assembled in meeting, separately, for the purpose of arriving at proper selling structures in preparation for de-control: the combined views to be considered by the General Sales Managers in meeting." (Exhibit 487)

In this connection C. E. Soward (Robin Hood), Montreal, wrote to C. Ritz, Minneapolis, Minnesota, on March 22, 1947, in part, as follows:

"It was agreed at the meeting that (as far as Eastern Canada is concerned) each Provincial Sales Manager should study the price setup and make recommendations to the General Sales Manager of each company as to the changes they would like to see put into effect when the opportunity arises. This is a matter that we ourselves have been discussing with the Sales Managers and they are working on it." (Exhibit 610)

It was contended that no further steps had been taken to implement this decision. Bearing in mind, however, the previous history of price agreement among the members of the Association and the fact that on the same day, September 15, uniform price advances were made by the members, with the minor exception noted, there is justification for at least the strong presumption that the amounts of these advances on flour and millfeeds were arrived at by agreement.



#### IV. PRICE AND OTHER AGREEMENTS IN ONTARIO, QUEBEC AND MARITIME PROVINCES

##### MILLFEEDS, ROLLED OATS AND COARSE GRAINS

###### 1. Millfeeds

The products remaining when common grades of flour are extracted from wheat are normally sold for livestock feed. These products, marketed as bran, shorts and middlings, are generally described as millfeeds. *Bran* is the outer covering of the wheat kernel. *Shorts* is a mixture of fine bran particles, wheat germ, and a small proportion of fibrous flour. *Middlings* is a mixture of a small proportion of fine bran particles, wheat germ and a large proportion of fibrous flour. The average ratio of production is slightly more than 70 pounds of millfeeds to one barrel (196 pounds) of flour. Thus an increase or decrease of \$1.00 per ton in the price of millfeeds is equivalent, in return to the miller, to a corresponding change of 3.5 cents per barrel in the price of flour.

If the return from the sale of millfeeds is regarded as an offset against total costs of producing flour, a miller who fails to secure millfeed prices as high as those of his competitors may be placed at a competitive disadvantage with respect to sales of flour. This price relationship is of great importance in the sale of flour, not only in the domestic market, but in export markets where Canadian mills normally compete with those of other countries. For this reason Canadian millers, in order to compete on favourable terms with American millers, try to sell their millfeed at prices at least as high as those prevailing elsewhere on the North American continent.

Normally, millfeeds must compete with coarse grains in the livestock feed market, and in times of ample supply of feedstuffs the prices of the former are naturally influenced by fluctuations in the prices of barley and oats. Under such circumstances the competition of alternative feeds may be as significant as competition among millers in determining the price of millfeeds. In this regard the situation differs from that of flour.

Since early in the war there has been a very strong demand for millfeeds, which has often been in excess of the supply in many localities. The consequence was that during the period that price ceilings were imposed on millfeeds millers had no difficulty in disposing of supplies at ceiling prices.

It was stated in evidence that not only in periods of strong demand but generally, adherence to the price structure in the case of millfeeds was more common than in the case of flour. The circumstances outlined in the above paragraphs undoubtedly assisted in the maintenance of established selling prices for millfeeds. At the same time, the bulky nature of millfeeds in relation to its value makes storage on any scale uneconomic so that a miller having a temporary surplus of millfeeds would be under some pressure to reduce prices temporarily to accelerate sales.

(1) MINIMUM PRICE AGREEMENTS. Recorded agreements with respect to millfeed prices generally took one of three forms:

1. Arrangements to ensure that prices satisfactory to members of the Association would be recognized.
2. Arrangements for orderly marketing of surplus stocks.
3. Arrangements to prevent indirect price cutting and marketing practices disadvantageous to millers.

Records of meetings at which the subject was discussed indicate that the method by which millfeed prices were regulated by the C.N.M.A. varied from

time to time. A memorandum of an Executive Committee meeting dated February 20, 1936, states that "Advances or declines in feed would be governed by vote of the majority . . ." (Exhibit 573).

Memorandum No. 5, reporting a similar meeting of June 9, 1936, reads in part:

"IT WAS RESOLVED that Domestic price of Feed shall be governed by the highest ruling price on the North American Continent." (Exhibit 699)

The minutes of a meeting of Ontario Sales Managers, dated December 14, 1938, recorded the understanding of members:

"... that the secretary would consult the Montreal members each week to determine a minimum selling level for feeds, which minimum selling level would be based on export feed values." (Exhibit 489)

Lists setting out millfeed prices for one or more regions were issued by the Secretary on at least ten occasions from January 1, 1939, to September 10, 1940. Export values were not used as absolute guides, however, during this period. In August, 1940, a suggestion that the price of bran and shorts be reduced \$1 per ton because of a decline in the United States market was rejected by a majority of the members.

At their meeting on September 10, 1940, the Executive representatives, acting on the advice of a special committee appointed earlier to study the situation, agreed to name a committee of three "to establish feed prices based on export values and computed on a Fort William basis." (Exhibit 572). Members were to be informed of the committee's decisions through the secretary. The millfeeds committee appears to have functioned only during the latter part of 1940, after which time notices of changes in millfeed prices were issued by the secretary after he had ascertained the will of members of the Association. An example of the method employed is furnished by an exchange of telegrams on February 13, 1941. D. E. Murphy, Secretary of the Association, telegraphed C. E. Soward, Maple Leaf Milling Company Limited:

"One mill has discretion bran shorts dollar fifty and two dollars middlings in circumstances do you favour dollar reduction bran shorts middlings."

Mr. Soward replied immediately:

"Western ourselves agree dollar reduction bran shorts middlings."

In the meantime, Mr. Murphy had apparently consulted Montreal members. He wired Mr. Soward:

"Reducing bran shorts middlings one dollar per ton." (Exhibit 489).

Association activity in instructing members regarding millfeed prices decreased abruptly when millfeeds became subject to maximum price control under Wartime Prices and Trade Regulations. Members experienced little difficulty in disposing of millfeed stocks at ceiling prices. Instructions regarding millfeed prices were included, however, in flour and feed price schedules issued by the secretary in 1943 and 1944 which were applicable to Northern Ontario, Abitibi and Lake St. John districts. A letter from George R. MacGregor (Lake of the Woods), Toronto, to W. L. MacGregor of the same company, dated December 19, 1944, describing a meeting of Ontario Sales Managers, reported that:

"It was also agreed that prices for feed for Manitoulin Island in winter-time were to be \$1.00 per ton over summer rates." (Exhibit 709)

(2) MODIFICATIONS OF PRICE AGREEMENT—"DISCRETIONS". In order to limit the extent of market disturbances which might occur when a mill sought to dispose of abnormal stocks of millfeeds, a system of limited discre-

tions was instituted by the Association. Under such a system a member was allowed to lower his prices temporarily by a fixed amount. In addition to facilitating disposal of surpluses on the domestic market, such a system made it possible for a mill, by establishing a lower price on the domestic market, to avoid the impediment of anti-dumping laws when selling in the United States market. Advantages in the latter market have, of course, been limited in recent years by export restrictions applying to millfeeds. The discretion system is outlined in a memorandum of an Executive Committee meeting of the C.N.M.A. on February 20, 1936:

"In the event that any mill has a surplus of bran, shorts or middlings which cannot be disposed of at the list price, such mill may, for a period of one week, upon notifying the Secretary of its intentions, offer said surplus at a discretionary price not exceeding \$1.00 per ton. [i.e. \$1.00 below list]. It is understood, however, that no bookings will be made at discretionary prices—sales being made for shipment within seven (7) days. It is further understood that the Secretary will immediately communicate this information to all members.

If it should develop that one week is insufficient time for any member to dispose of said surplus, an additional week will be granted upon application being made to the Secretary, who, in turn, will keep all members posted in respect thereto." (Exhibit 573)

Memoranda of meetings later in the year show that minor modifications were made in the wording of the resolution. Memorandum No. 5 of the meeting on June 9, 1936 (Exhibit 699) shows that the discretion was limited to straight car sales, and that no other mill was allowed to follow the discretion granted the original applicant without first notifying the secretary of his intention to do so.

Memorandum No. 38, July 21, 1939, records a slightly different ruling:

"In the event of any member having a surplus of feed which must be sold on the domestic market, such members may, upon notification to the secretary, quote open prices on straight cars of millfeed for a period of one week, for immediate shipment only; and other members may have the privilege of meeting such prices in straight cars only, upon notification being given to the secretary." (Exhibit 441)

A similar ruling was announced in mid-September, 1940. (Exhibit 515). By the end of September, 1940, the system of limited discretions as opposed to "open" prices, appears to have been reinstated, for, on September 30, the Secretary notified members that two mills had requested a discretion of \$1.00 per ton on millfeeds. (Exhibit 606).

The limited discretion system was utilized by the Association during the first five months of 1941. Occasionally the widespread use of discretions was followed by general price reductions. In every case, however, marketing of surplus stocks appears to have been conducted in an orderly manner, and with the sanction of the Association. Documentary evidence is singularly free of complaints regarding "unauthorized" reductions in millfeed prices. After September, 1941, arrangements for disposal of surplus stocks appear to have been, like minimum price agreements, unnecessary.

It is noteworthy that discretions applying to millfeeds were permitted on straight car lots only. Had the discretion been applicable to mixed car lots, it could have been construed as an indirect price reduction on flour included in the shipment, and it is probable that the ruling was designed to prevent just such an "abuse" of the millfeeds discretion.

(3) ARRANGEMENTS TO PREVENT INDIRECT PRICE REDUCTIONS. In addition to agreeing on methods of maintaining minimum prices of millfeeds and controlling disposal of surplus stocks, the Association drafted regulations designed to prevent the extension to customers of concessions which might be regarded as price reductions. Chief among the practices which the members sought to avoid was "advance booking", which protected buyers against advances in



price. The entry in a memorandum of a meeting of the Executive Committee on February 20, 1936, is typical of recorded regulations regarding this practice:

"Millfeeds must only be sold for shipment within thirty days from date of sale."  
(Exhibit 573)

The regulation was reaffirmed from time to time, and when violations in one sector were reported early in 1938, the Secretary was instructed to issue a circular to sales managers advising them that "it was expected that they [the regulations] would be rigidly adhered to."

At the Executive meeting of April 5, 1939, the item reaffirming the regulation included the ruling:

"definite shipping instructions shall be obtained at the time order is taken."  
(Exhibit 473)

The regulation was relaxed, with regard to the time limit, in July, 1939, when a sixty day period replaced the thirty day period referred to above. In September, 1940, the thirty day limit was re-instituted. In a letter of September 24, 1940 addressed to R. A. Henderson (Robin Hood), H. Groom (Ogilvie), C. E. Soward (Maple Leaf) and W. L. MacGregor (Lake of the Woods), the Secretary informed them that:

"The Executive Committee, in meeting September 10th adopted a recommendation on millfeed marketing of a special committee previously appointed to consider this question, among other things, which recommendation was along the lines that millfeed sales shall be limited to shipment within thirty days from date of order, with a carrying charge of 50 cents per ton levied on undelivered feed balances for every fifteen days or part thereof following contract delivery period."  
(Exhibit 489)

On October 7, 1940, the Secretary issued a circular addressed "To Sales Managers" and reading, in part, as follows:

"The special committee . . . has prepared the wording of a rubber-stamp WHICH MUST APPEAR ON ALL MILLFEED ORDERS AT THE TIME ORDER IS TAKEN. The wording was as follows:

'A carrying charge of 50 cents per ton shall be levied on undelivered millfeed balances for every fifteen (15) days or part thereof in excess of 30 days from date of order.'  
(Exhibit 489)

At a meeting of Quebec Sales Managers on November 8, 1940, all member mills, with one exception, were reported to be using the rubber stamp as directed. The member providing the exception gave assurance that deliveries would be made within the thirty-day period, and reported that, in the cases where the stamp had not been used, sales had been effected prior to receipt of the stamp. It was impressed upon the meeting that specific quantities of millfeeds, as well as dates of shipment, were required to be stated when orders were taken. (Exhibit 559).

When the Ontario and Maritime Sales Managers met five days later, it was noted that:

"Considerable improvement in the millfeed situation was reported to be noticeable by virtue of the 50 cent advances."  
(Exhibit 544)

Instructions issued to Sales Managers by the Secretary on August 15, 1941 read:

"With respect to Millfeed—until further advised, sales must be made for shipment positively within three (3) days from date of order . . ."  
(Exhibit 489)

A new price schedule issued by the Secretary fifteen days later bore the note:

". . . sales shall be made for shipment within 3 days from date of order."  
(Exhibit 489)

In later correspondence reference is made to the proposal that both flour and millfeed should be sold for prompt shipment only. The evidence does not indicate whether or not the proposal attained the force of a regulation. It is clear, however, that between the years 1936 and 1941 the Association succeeded in eliminating the practice of protecting buyers for any substantial period against advances in millfeed prices, thus fortifying the position of the sellers.

Schedules of millfeed prices issued by the Association usually reminded members that jobbers' commission was 50 cents per ton. No complaints regarding violation of this ruling were found to be recorded in the available evidence, and the minutes of a meeting of Quebec Sales Managers on November 8, 1940, included the item:

"Further assurances were received from members that the commission allowance of 50 cents per ton to jobbers in defined distributing centres was not being exceeded."  
(Exhibit 559)

Items such as trucking charges and used bag allowances were covered by agreement. In general any arrangement or concession which might tend to reduce indirectly prices obtained for millfeeds was carefully limited by Association action whenever such action appeared to be necessary. After 1941, millfeed prices needed little or no support from the Association. The situation during the later years is described in a letter from the Secretary of the Association to G. S. Dodington (Purity), Toronto, on November 11, 1946, in which he advised against reducing prices when packing millfeeds in paper rather than the more expensive jute bags. The Secretary commented:

"The big question is to get the feeds and get them out. Price is a very minor detail these days."  
(Exhibit 460)

## 2. Rolled Oats

In Eastern Canada, as in the West, only four members of the C.N.M.A. manufacture rolled oats. These are Ogilvie, Purity, Quaker and Robin Hood, which are referred to as "cereal mills". The other members of the Association buy rolled oats from the cereal mills at an agreed price which is slightly lower than the cereal mills will sell to the trade but they apparently make no great effort to sell in large quantities. Their prices to wholesalers seem to follow those fixed by the cereal mills and if one of their customers wants some rolled oats it is provided as a service more than as a money making operation in its own right.

In the East, as in the West, agreements on rolled oats prices fall within two major classifications, those on bulk rolled oats and those on case or package rolled oats. Although there is record of agreement on prices for all rolled oats since early 1934, there were intervals in which the major price agreements on either bulk or case rolled oats were not operative.

The negotiations which were part of the price agreement process in the eastern rolled oats business were conducted between representatives of the four cereal mills and were not ordinarily a concern of the full membership of the Executive of the C.N.M.A. Meetings of the cereal millers sometimes took place after meetings of representatives of all the C.N.M.A. members who had met to discuss other matters. Sometimes the Association secretary issued a schedule or a minute showing the prices in effect or the results of the agreements reached, but often he did not and apparently he was seldom present when rolled oats problems were being settled.

Besides the four members of the C.N.M.A. who made rolled oats there have been two smaller manufacturers in Eastern Canada who were not members of the Association: Dominion Linseed Oil Company, Limited, of Toronto, Ontario, and James Wilson and Sons of Fergus, Ontario. The second of these is the more important of the two in this field. One problem of the Association cereal



mills was to keep the small millers from selling at prices substantially lower than those established by the cereal mills. Various forms of pressure, including "numerous ultimatums", were applied to get the independent mills to fall in line, and as some inducement they were allowed to sell their goods at stated differentials, 5 or 10 cents per sack below the agreed Association price in the area concerned. Agreements with the small mills were on the "bulk" rolled oats as distinct from package oats.

(1) **BULK ROLLED OATS.** Evidence examined during the course of the inquiry shows that on May 17, 1934, an understanding was reached by representatives of the four cereal mills and James Wilson and Sons on a formula for the fixing of prices on bulk rolled oats. With the Winnipeg July price of oats at 35 cents per bushel the price of one barrel (two jute sacks of 90 pounds each) of rolled oats, on the basis of Montreal freights, "delivered in", was \$5.30. With each movement of a full 2 cents per bushel in the July option the basic price was to change by 20 cents. A differential of 10 cents per sack was allowed to James Wilson and Sons. It was agreed by all that no mill would pack private brands of either bulk or package rolled oats.

This agreement carried on for some time. In February 1935, T. J. Griggs (Robin Hood) wrote to R. E. Cutting (Quaker) that the agreement was still in force and "has made money for all of us". (Exhibit 626). In December 1935 Quaker's undertaking to stop absorbing  $\frac{1}{2}$  cent per bag of freight on sales to Cape Breton Island indicates that the agreement was still in effect. (Exhibit 606). Other records show that the agreement remained in effect until some time in October 1938 when there was a break-up for about a month. A new agreed price of \$2.15 per 80 lb. jute bag (which had replaced the 90 lb. bag), basis Montreal freight, went into effect on November 25, 1938. From then on, in so far as bulk rolled oats were concerned, there was almost always an agreed price in effect in Eastern Canada. Most of the price changes, brought about principally because of changes in the cost of oats, were handled by direct negotiation between representatives of the various companies concerned, and the Association facilities were seldom used.

Over the years the principal recurring problem seems to have been to stop the independents, particularly Jas. Wilson and Sons, from getting too large a share of the trade. The important thing was to keep them from selling at too great a differential below the agreed prices. If this could be done, and for the most part it was, they would not sell too much.

Small mill competition was a matter of concern only in localities where carload shipments could be made. If the amount of rolled oats business obtainable was not large enough to call for carload shipments, the Association mill could cut the small mill out because its rolled oats could be shipped in "mixed" cars along with flour and feed with a consequent saving in freight charges.

Since bulk rolled oats were not sold under highly advertised brand names, the agreement among the mills was not beset by difficulties caused by highly expensive non-price competition brought about by the sponsoring of contests or other activities of a like kind which tend to bring retaliation. It is the case, of course, that the basic arrangement was buttressed by various subsidiary arrangements which set out dealer classifications, the sizes of sacks, the price differentials and so on, which helped the interested parties to carry out the agreements.

A copy of a differential sheet, issued by the Secretary on August 6, 1937, was filed as an exhibit during the course of the inquiry. This sheet was prepared at the time of the changeover from the 90-pound basic sack to the new basic sack of 80 pounds. It showed the 80-pound sack in jute as basic and showed prices for all sizes of bulk packaging used, whether wood, jute or cotton. The sheet recorded the prices of 80 pounds in jute at five cent intervals from \$1.70 to \$4.05 inclusive, and indicated under each of these figures the price which would prevail for the



other types of packaging. As examples, under the price of \$1.70 and \$3.40 for 80's jute the following prices were recorded as the prices to be charged for the several types of packaging:

80's	Jute .....	\$1.70	\$3.40
20's	Cotton .....	.52	.95
15/6's	Baled .....	3.15	5.00
98's	Jute .....	2.15	4.20
24's	Cotton .....	.67	1.09

In addition the following differentials were to apply:

80's	Cotton .....	5 cents per bag over 80's Jute
80's	Wood .....	60 cents each over 80's Jute
160's	Wood .....	70 cents each over 2-80's Jute
98's	Cotton .....	5 cents per bag over 98's Jute

(Exhibit 437)

It was thus possible for anyone using this sheet to say, once the price of oats or the basic price of 80 pounds of rolled oats in a jute sack was known, what the price of bulk rolled oats packed in any alternative way to the 80 pound jute sack would be. This detailed table would help to remove any possibility of variation in price among Association members.

Such differential sheets were issued from time to time as occasion demanded. Aside from changes in size of containers, the other reasons for change in the sheets would be the relative costs of materials and packing costs.

It was apparently of the agreement on bulk rolled oats that Charles Ritz was thinking when he wrote to R. A. Henderson (Robin Hood) on October 21, 1938:

"... the rolled oats conference has made us real money during the last five or six years. We estimate it has been worth \$75,000.00 to \$100,000.00 a year more than we got during the preceding few years . . ."

(Exhibit 616)

Insofar as could be ascertained, price fixing arrangements on bulk rolled oats were still in effect when this inquiry started. They were in effect when Robin Hood's Toronto office circularized its Ontario salesmen on November 9, 1944, and said:

"Our present price basis on Rolled Oats and Case Oats has been in effect since February 3, 1943 . . ."

(Exhibit 626)

Since the Association's price schedules for rolled oats were revised in January and February 1943 (Exhibit 437), it would seem that the reference was to prices fixed at the time of these revisions. The Association Secretary had made reference to these matters when he issued a circular on January 22, 1944 calling attention to the proper price for bulk rolled oats sold in Sydney, N.S. It was \$6.70 per barrel, not \$6.68 as had been quoted by some. (Exhibit 595)

In a letter of September 30, 1946, to the Secretary, J. G. Wharry (Quaker), Peterborough referred to some price cutting on rolled oats at Chatham, Ontario. After stating that he wanted the matter taken up with G. S. Dodington of Purity and ironed out, he went on to say:

"I don't want to make any issue out of this Chatham affair because after all the Rolled Oats business is pretty clean at the present time and we are enjoying a good business and as long as Purity Flour Mills think that the Rolled Oats business is poor and they must do something like this I am not too much concerned but a small thing like this could spread into something greater."

(Exhibit 499)

Further evidence of agreement is contained in the following extract from a letter of March 22, 1947 from C. E. Soward (Robin Hood), Montreal, to C. Ritz at Minneapolis. The letter was written shortly after the Prices Board authorized an increase in the price of rolled oats.

"... they [Quaker] finally agreed to the advance of 70 cents per 80 lbs., the same as the rest of us."

(Exhibit 626)

(2) CASE OR PACKAGE ROLLED OATS. Price arrangements have been made by the four cereal mill members of C.N.M.A. to cover the sale of case or package rolled oats in Eastern Canada, but the operation of the various agreements has not been as nearly automatic as in the bulk rolled oats section. There has been more bickering during the life of the arrangements and they have been out of effect for longer periods than the agreements on bulk rolled oats have been.

There are several important differences between the bulk and packaged rolled oats businesses. First, there is no effective small mill or non-cereal mill participation in the Eastern case rolled oats market. The trade is held almost completely by the four cereal mills.

Then too, case rolled oats are prepared by the manufacturer, for eventual sale under his own brand name through retail outlets for use in the purchaser's own home. This means that there is much more spent in advertising on case oats than on bulk rolled oats. For years Quaker did much more business in case rolled oats than anyone else. It is around this fact that the peculiarities of the price-fixing arrangements on case rolled oats in Eastern Canada have centred.

For some years Quaker has been able to sell its product at a premium price over that of its three competitors. It was able to enter into arrangements for the fixing of prices with the firm knowledge that its Quaker brand of rolled oats was in demand and would sell in quantity. It seems that Quaker's position was considered by its management to be better, profit-wise, if it sold at higher prices and met competition at an agreed differential than it would have been to sell at more competitive prices and hence get smaller gross returns on somewhat the same volume of goods.

Although this was probably the real reason that Quaker agreed to prices that allowed its competitors to undersell it, a further argument put forward by Robin Hood was that Quaker did more advertising on its case rolled oats and that consequently Robin Hood should be allowed a lower price. This was also a reason for Ogilvie allowing Robin Hood to sell at a lower price than it did.

It is noteworthy too that Quaker's sales of rolled oats formed a larger proportion of its total business than was the case with the other three cereal mill members of the C.N.M.A.

Because of these various viewpoints there was always some room for argument and compromise in the fixing of prices on bulk rolled oats, case rolled oats, or both.

Evidence produced during the course of the inquiry shows that Robin Hood as a party to the agreements on packaged rolled oats had a somewhat different purpose to achieve. Robin Hood apparently exploited the situation for what it was worth with the intention of enlarging its share of the market. Thus, if by agreement its chief competitor's prices were maintained at a relatively high level, Robin Hood had a wider range within which it could cut prices without selling at unprofitable levels.

The manufacturers of case rolled oats have put out both premium packages and non-premium packages. The premium packages have contained some article such as a piece of kitchen-ware or a cup and saucer.

On February 8, 1934, representatives of the four cereal mills met in Montreal and adopted a wholesale price structure on packaged rolled oats. Such subsidiary but essential matters as conditions of delivery to chain stores, quantity allowances, cartage, direct retail sales and drop shipments were discussed and agreement as to the practices and charges to be adopted was reached. (Exhibit 626).

Although the agreements made at this meeting did not go into immediate and full effect, R. E. Cutting (Quaker), Peterborough, following another meeting, on June 11, 1934, was able to write:

"We all agreed . . . we would . . . work as closely in harmony as though an arrangement were actually in effect."

(Exhibit 626)



On July 18, 1936, after a period in which the arrangements appear to have broken down, a new schedule of prices was agreed upon and put into effect. (Exhibit 626). Apparently this involved a price increase for everybody, Quaker's prices were to be higher than Ogilvie's, which in turn, were to be slightly higher than those for Robin Hood and Western Canada.

At the meeting on November 12, 1936, it was agreed that Ogilvie would be 10 cents a case under Quaker on everything and Robin Hood and Western Canada would be not more than 20 cents per case under Quaker. This arrangement was still in effect in October 1937. While there is some indication that there were unimportant deviations from the straight line of the agreement, there is no question but that it remained in operation until the spring of 1940, save for an interruption of a few months in 1939 when it was not effective.

In the spring and fall of 1940 there were periods in which price agreements on package rolled oats were not in effect. Just when they were next sold on an agreed price basis is not clear. In 1941, however, Quaker introduced a brand called "Tillson's", put up in both non-premium and premium packages in the 48 ounce size. The rolled oats were exactly the same as those sold by Quaker under its regular brand name, but the prices were the same as Robin Hood's which were  $27\frac{1}{2}$  cents per case lower than Quaker's higher priced brand. On September 18, 1941, R. E. Cutting (Quaker) wrote to H. Groom (Ogilvie) and gave particulars of prices in both Western and Eastern Canada for all the different package oats for the four cereal mills. Robin Hood's eastern price for non-premium packages was \$2.00, the same as Quaker's price on Tillson's, with Quaker non-premium brand at \$2.275. Chinaware packages were being sold by all mills at \$1.10 per case above their non-premium prices. (Exhibit 606).

Mr. Cutting thought that the prices for Tillson's were too low in the East but did not want to increase them until the others got more in line. In his letter of September 22 to Mr. Groom he said: "The minute Robin Hood's price is advanced we shall make our selling price on Tillson's the same as the new advanced prices." (Exhibit 606). Both Robin Hood and Ogilvie's had advanced their prices on September 30, 1941. Robin Hood went up 10 cents per case and Ogilvie went up 5 cents. This resulted in their prices being the same. Quaker, in the meantime, had raised its own prices on September 24.

The schedule of Package Oats prices issued by the Secretary and dated January, 1943, bore the following notation:

"One member at the present time selling at 20 cents per case over prices charged by other members, may reduce this spread to 12 cents per case at some later date."  
(Exhibit 626)

This indicates that there was agreement at that time. It seems that with minor local exceptions the price agreement on package rolled oats remained in effect until the time this inquiry started. On March 17, 1947, Quaker were still maintaining a spread of 20 cents per case over Purity, Robin Hood and Ogilvie in the East on non-premium rolled oats.

Further evidence of agreement is found in a letter of March 22, 1947, from C. E. Soward (Robin Hood), Montreal to C. Ritz at Minneapolis. This letter was written shortly after the Prices Board had authorized an increase in the price of rolled oats. In this letter Mr. Soward said:

"After permission was received from Ottawa to put in the advance Quaker were inclined to only go up sufficient to bring their prices in line with ourselves. However, we persuaded them that it would not look good at Ottawa to only go up 12 cents a case compared to 32 cents per case which was authorized, and they finally agreed to the advance of 70 cents per 80# and 32 cents per case, the same as the rest of us."  
(Exhibit 626)



The only subsequent major change in pricing practices was well described by R. R. Faryon, president and general manager of Quaker, in a letter dated September 30, 1947, to W. H. White in England:

"We finally completed a manoeuvre which I have been working on ever since I came here—that is, we have both Robin Hood and Ogilvie selling Rolled Oats at the same price as ours. This should have been done many years ago because our spread . . . over the competition merely put them in business, and today Robin Hood, according to all the surveys we have been able to buy or make, have a nice, big, healthy chunk of the total business.

My strategy in getting them up to our price is to threaten them with Tillson's at 40 cents under their price. I did this once and they have been good boys ever since.

We have a standing offer with all the trade that if Robin Hood or Ogilvie cut their price, they can always buy Tillson's for less than the cut price." (Exhibit 503)

It is clear from the evidence produced during the course of the inquiry that manufacturers' selling prices on rolled oats have been fixed for long periods by agreement among Association members. Over and above the basic agreements there has been joint action in fixing prices for submission on tenders for government and other business. Other matters which if left undecided might have allowed a possibility of price competition through reduced delivery charges or reduced package differential charges or something similar have been controlled under common policies.

### 3. Coarse Grains

The members of the C.N.M.A. do not appear to have entertained hopes of making agreement on prices of coarse grains effective throughout the entire area. Competition from locally-grown produce in most of the eastern market area was one of the major impediments to such a project. In 1940, however, a move was started to establish minimum prices for coarse grains shipped in mixed cars to the Northern Ontario and the Abitibi District, where locally-grown coarse grains were not an important factor in determining prices.

At a meeting of Ontario and Maritime Sales Managers on November 13, 1940, it was pointed out that prices received for coarse grains sold by millers in the Abitibi District were, in some cases, far from satisfactory. Following discussion, a survey of the Association prices disclosed spreads as wide as \$5 per ton between the highest and lowest prices received by member companies for coarse grains sold in the District. A circular setting forth proposed minimum prices and requesting expressions of opinion concerning them was subsequently sent to member mills. Commenting on the results of this survey, and the fact that the exact purpose of the project was not clear in the minds of some members, C. E. Soward (Maple Leaf), Toronto, in his letter of December 11, 1940, to the Secretary said:

" . . . Our endeavour . . . was simply to set the prices for Northern Ontario and the Abitibi district where we have no competition except amongst ourselves—the large mills shipping from the West . . . " (Exhibit 489)

A circular addressed to representatives of Lake of the Woods, Maple Leaf, Ogilvie, Western Canada and Quaker from the Secretary of the Association on December 12, 1940, outlined the position of the mills and defined the project more clearly:

" . . . what was originally in mind was an attempt to stabilize the price of coarse grains in Northern Ontario and the Abitibi District where sales of this commodity had been made at less than cost, in all probability to secure flour business . . .

The point made is that there are only six mills<sup>1</sup> doing business in Northern Ontario, the Temiskaming area and the Abitibi District—all members. There are no small mills to be kept in mind and no outside jobbers selling in the above-named territory.

<sup>1</sup> The documentary evidence indicates that the six mills were: Lake of the Woods, Maple Leaf, Ogilvie, Quaker, Robin Hood and Western Canada.

Why, therefore, should it not be possible to establish a level on coarse grains? If it is a question of cutting the price of grains in order to secure flour business, then there can be no bottom to grain prices and it would be only a question of time when coarse grains are sold below 'below cost'.

Whilst it is recognized that it would be extremely difficult, perhaps impossible, to establish a minimum basis for coarse grains throughout Eastern Canada, at the same time this sales manager feels that there is no reason why any difficulty should be experienced in controlling prices in one section which might be said to be set apart from all others."

(Exhibit 489)

A schedule of proposed minimum prices followed.

Memorandum No. 55 of Executive meeting of January 21, 1941, included the following reference to the subject:

"It was understood and agreed that weekly prices of coarse grains received by the secretary from the Fort William representative of one of the members would be circularized, which would form the minimum bases for these commodities in Northern Ontario and in the Abitibi District.

Further discussion on this subject of domestic matters is contained in a private memorandum to the Executive."

(Exhibit 475)

In a circular letter of May 2, 1941, addressed "To Sales Managers" the Secretary said:

"... I would direct your attention to a clarification at the bottom of the schedule which now provides that 'prices on straight cars of WHOLE OATS must necessarily be governed by competition experienced from elevator companies.

That, I am informed, was the original understanding.

It transpires, however, that quotations were made to an account in the north country on crushed oats and perhaps barley meal, in carload lots, at \$3.00 per ton under the schedule price.

It is represented to me that elevator companies are concerned only to a limited extent in crushed oats and barley meal, and it is felt in more than one quarter that mills would be well advised to ignore such competition and adhere to list prices, thereby saving themselves thousands of dollars by so doing.

In the circumstances I have made it plain on the schedule that the original understanding was that prices on straight cars of WHOLE OATS ONLY must necessarily be governed by competition experienced from elevator companies, and would point out that this feature does not apply to Crushed Oats or Barley Meal."

(Exhibit 489)

To facilitate price rulings, a definition of the territory included in "Northern Ontario and Abitibi District" was provided. Price schedules were based on information supplied by V. W. MacLean of Ogilvie's Fort William office. From October, 1943, to July, 1944, no lists of coarse grain prices were issued by the Secretary apparently because there were no significant price changes during the period. In the latter month, however, a schedule of prices was reissued by the Secretary apparently because of disturbed price conditions. In his covering letter of July 15, 1944, he commented as follows:

"... Perhaps the non-observance of prices, even if not widespread, is due to the fact that the schedule has not been issued for some time; although it has been customary to reissue the schedule only in event of change in price, and as I have said prices are practically unchanged since the last issue.

However, no harm can occur by a reissuance of the schedules; in fact, much good may be derived therefrom.

In other words, the attached schedule gives prices presently in effect. If for some reason they cannot be observed generally, then perhaps you will advise the reasons therefor. If, on the other hand, they can be observed, then you might as well ask and receive, say, \$2.13 for bagged Oats instead of \$2.12 or some lesser amount.

Past experience has demonstrated that it is possible to maintain this structure. Nothing is impossible these days."

(Exhibit 601)

A similar lapse in the issuance of schedules occurred between September, 1944 and June, 1945, when the September schedule was reissued. In his circular letter of June 25, 1945, the Secretary observed:

"The schedule is reissued primarily to indicate that these prices were agreed upon and in the circumstances mills are requested to adhere thereto."

(Exhibit 600)

New schedules of coarse grain prices were issued from time to time by the Association, occasioned by changes in cost factors or Wartime Prices and Trade Board Orders affecting coarse grains.

None of the coarse grain price schedules issued by the C.N.M.A. referred to districts other than Northern Ontario and Abitibi.

At least one member firm strongly urged, in 1944, that the Association arrange coarse grain prices for all of Eastern Canada, and particularly for the Maritime Provinces. It was apparently felt, however, that no general control was possible.



## V. PRICE AND OTHER AGREEMENTS IN WESTERN CANADA

### FLOUR

Control over prices and terms at which the members sell their products has been a matter of first importance in the activities of the Western Division of the C.N.M.A. This control has been exercised through the Executive which has met from time to time to establish price structures and, within these structures basic prices and terms.

The agreements have been carried out, with the assistance of the Secretary by officers of the companies including sales managers and local managers.

Prior to the establishment of the Western Division similar activities had been pursued by the Western Millers Association of which the same firms were members. One of the first actions of the new Western Division was to deal with a change in flour prices. This is indicated by a letter dated July 2, 1936, from C. Wallace (Lake of the Woods), Winnipeg, to C. H. G. Short, then General Manager of Lake of the Woods, in which, after reporting that D. P. Noel had opened an office as Secretary, he went on to say:

"One of his first duties today was to arrange an advance in the Western price structure in line with increase in Wheat values. Mr. Horn [Western Canada] was of the opinion that this should be 15c per barrel, Mr. Sellers [Ogilvie] would have liked 20c per barrel, but Messrs. Farrell [Robin Hood] and White [Quaker] thought 10c per barrel would be sufficient. We advised Mr. Noel that whatever the majority favoured would be quite acceptable to us—the result being that an advance of 10c per barrel was made effective on all grades, including Bakers price list, which information we are wiring Montreal Office this evening." (Exhibit 692)

Two separate selling structures, baker and dealer, have been established, and basic prices of flour have been fixed for each structure. In addition there have been agreements upon price differentials for the various grades of flour and for the different types of packaging; also, agreements upon price differentials for sales to different classes of customer within each structure. Geographically, Western Canada was divided by agreement into fifteen zones, with the basic price in each structure being fixed on the basis of what were described as the common zones. Sales in the remaining zones were at fixed price differentials above the common zones.

In addition to the agreements to maintain uniform prices, measures were adopted by the members of the Western Division to prevent concessions in price being made in other ways. Throughout the period 1936-1947 these measures were agreed upon from time to time at meetings of the Executive and at times at meetings of cereal members and of regional groups. These agreements related principally to terms of sale and discounts and included such matters as cash discount, prepayment or non-prepayment of freight and cartage, restriction of sales on a consignment basis to certain commodities, agreement to sell on the basis of current prices effective on date of shipment, allowance for the picking up of certain commodities at the warehouse, classification of customers, agreement not to give premiums or pack private brands, maximum commission payable to distributors and numerous other matters. Some of these subsidiary agreements were applicable to all products while others applied only to specific products. The instances cited herein are not of course all inclusive and the numerous agreements were varied or reaffirmed from time to time. There are numerous references in the minutes of meetings and in the correspondence to the many subsidiary agreements, some of which will be illustrated in subsequent sections dealing with specific products.

## 1. Formula for Adjusting Flour Prices to Wheat Price Variations

Since the price of wheat is the most important item entering into the cost of flour manufacture, variations in its price would affect the selling price of flour even in the absence of agreement. In the years prior to government price control the price of wheat often varied from day to day, so that it was a practical impossibility for the Executive to meet and establish new structures every time there was a change in the market. A formula was adopted providing for automatic variations in the dealer and baker structures based upon variations in the price of wheat.

In the minutes of January 20, 1938, the following agreement was recorded with respect to market changes:

"Agreed that the structure for flour shall now be on the basis of 2 Nor. Wheat in store Fort William, plus the mill premium as the case may be, (mutually established to be 2½c per bushel at present).

The members finally found themselves in the position of having to recognize and accept the following basis as at the close of the Winnipeg market of Wednesday, January 19, 1938.

		W. Ont., Man., Sask. and Alberta Common Zone 1st Patent 98s Cotton Dealer list—Cash Carlot
2 Nor. Spot ..	\$1.35½	
Mill Premium	.02½	
	<hr/> \$1.38	\$7.70 per Barrel

and to agree that market changes on flour shall be effected on the basis of a fluctuation in wheat of .04c per bushel to represent 20c per barrel." (Exhibit 686)

In explaining this item in the minutes, G. H. Booth (Lake of the Woods) indicated, in a letter of January 24, 1938, to C. H. G. Short, that previously the formula was on a different basis:

"At the outset, reference was made to the Minutes of meeting held in Montreal on May 31 and June 1, 1937, also meeting in Winnipeg on November 25, 1937, at which it was definitely decided to establish the price structure on the basis of ONE NORTHERN IN STORE FORT WILLIAM, \$1.26½, Top Patents 98s Jute, Cash Carlot, \$7.40 per barrel, Fort William; the Secretary receiving instructions to effect market changes on Flour on the basis of a fluctuation in Wheat of 4c per bushel to represent 20c per barrel.

The basis on the date of the last price change (January 19) was ONE NORTHERN IN STORE FORT WILLIAM, \$1.44½, Top Patents 98s Jute, Cash Carlot, \$7.60 per barrel, but when it was pointed out that there is a shortage of ONE NORTHERN Wheat it was suggested by Mr. Sellers, and immediately seconded by Mr. Farrell, that TWO NORTHERN IN STORE FORT WILLIAM, plus a Mill Premium of 2½c per bushel be taken as the basis for the compilation of all future structures." (Exhibit 686)

At a meeting of the Executive on February 22-23, 1938, the formula was changed, as recorded in the following minute:

"Agreed that the structure for flour shall now be on the basis of 2 Nor. Wheat in store Fort William, plus the mill premium as the case may be (mutually established to be .01c per bushel at present);

and agreed also that market changes on flour shall be effected from this point on the basis of a fluctuation in wheat of .02c per bushel to represent 10c per barrel."

(Exhibit 1)

With variations from time to time, such as temporary changes in "October Wheat" as the basis and periodic revisions of basic prices, the formula method of making changes in the flour price structure was followed until the industry came under government price control in December, 1941. For a short period after price control became effective, the price of wheat fluctuated below the high point of the basic period (Two Northern 74½ cents); and flour prices, on the basis of the formula, also fluctuated within a similar range but eventually returned to



the basic period ceiling. Although the price of wheat increased during the period of price control, it ceased to govern flour prices since the mills received from the Canadian Wheat Board a subsidy on their domestic production equal to the difference between the Wheat Board's selling price and the average price paid for wheat in the basic period, subject to provision for limitation of subsidies in relation to excess profits. During the period of price control, however, the members of the Western Division agreed upon variations in Association price structure which will be discussed in subsequent sections.

## 2. Zone Differentials

The system of zone differentials has been an essential element in the system of control over prices in Western Canada. It has involved the division of the territory from the Head of the Lakes region to the Pacific Coast into fifteen zones. Agreement upon the various zones and on the price differentials applicable in each zone appears to have been established over a period of years. In Appendix I will be found the geographical description of the zones and the price differentials applicable during the period of government price control except with respect to zones 10, 11 and 12, which are referred to more specifically in a subsequent section relating to the dealer structure. Very few references to the establishment of zones and prices within them are found in the minutes, the last reference being in the minutes of Executive meeting of July 31-August 1, 1939, as follows:

"Agreed that all points on the railways north of Hudson Bay Junction to Churchill shall now be a zone and take an arbitrary of 20c per barrel over the Manitoba Common Zone." (Exhibit 11)

The dealer and baker structures are built on the foundations of Zones 1, 2, 4 and 5, which are known as the Western Ontario, Manitoba, Saskatchewan and Alberta common zones, the remaining zones being at fixed price differentials of 10 to 70 cents per barrel over these common zones. For example, if the basic price of the dealer structure is established at \$5.30 per barrel for the common zones, the basic price in Zone 6 would be 20 cents per barrel higher or \$5.50. If any variations were made in the basic price of flour in the common zones, as for example in a period of fluctuating wheat prices, such changes would be reflected automatically in the basic price in each of the remaining zones. Using the example already cited, if owing to wheat fluctuation, the basic price of flour in the common zones increased from \$5.30 to \$5.40, the basic price in Zone 6 automatically would be increased from \$5.50 to \$5.60. Where price variations were restricted by agreement to a particular zone or zones, the automatic variations would apply only in the particular zones indicated. The automatic variations described would apply similarly to the baker structure where variations were made in the basic baker price in the common zones.

Changes might be made in the zones or in the differential over basic price in the common zones by agreement among members. For example, prior to October 24, 1941, Zones 7, 8 and 9 in British Columbia were 30c, 40c and 50c per barrel over basis respectively, but on that date the freight differential was adjusted downward 20 cents per barrel in each of these zones.

The establishment of zone prices is, of course, designed to prevent any variations in prices developing because of the different locations of the various mills. For example, only two of the larger companies have mills in Saskatchewan and only one large company has a mill in Northern Alberta. If prices were directly related to costs, flour companies would sell more cheaply in the territory immediately surrounding the mill than in more distant sections. Such a course would lead to competition in price automatically because of differences in transportation costs. By agreeing on uniform prices for all sales within common zones the factor of location is removed and all companies can sell on the same basis. Thus, Maple Leaf selling in Saskatoon flour which is made in Medicine Hat, have to



absorb freight charges as compared, in this example, with Quaker or Robin Hood selling in the same territory flour from their Saskatoon mills. This means that the buyer of flour gets no benefit if he happens to be located in the same city as a flour mill. He pays the same price, under a system of zone prices, whether he secures his flour from the mill in his neighbourhood or from one farther away. On the other hand, companies shipping into territories where a mill is actually operating receive for their flour a return which is smaller, by the amount of the freight charges, than that obtained by the local mill. The local mill thus obtains advantages from location, but the local buyer does not.

An individual company, acting independently, might decide to absorb some freight charges on shipments to distant customers in order to enlarge its market but in so doing it would be competing in price with others selling in the same localities. This is not the situation here where the principal sellers get together and establish uniform prices for deliveries in wide territories in order to prevent competition in price. Even variations which might arise from local delivery costs were guarded against in some instances, agreement being reached as to the amount of allowance or discount and, in some other cases, purchasers were to be denied any discount or allowance for doing their own trucking. Moreover the elimination of the factor of location would probably result in the local mill being unable to serve fully its natural market and having to sell more elsewhere, thus giving rise to cross-hauling, a most uneconomical use of transportation facilities.

### 3. Agreed Prices to Dealers—the “Dealer Structure”

The members of the Western Division have had definite understandings on the prices to be quoted to wholesale and retail dealers. Throughout the period the basis of the “Dealers’ Structure” has been either the carlot outright purchase or the net cash carlot price per barrel of first patent flour packed in two 98-pound jute or cotton bags, as the case may be.

During the period of open wheat market operations, the basic price varied automatically, as already noted, with changes in wheat prices. The dealers’ structure made specific provision for price differentials below and above this basic price to allow for different quantities, different zones, cities and country purchasers, outright purchase and consignment transactions, packaging in jute and in cotton bags, as well as between different classifications of dealers such as independent retailers, chain and department stores, and jobbers. Once the basic price is agreed upon, all other prices can be readily determined by reference to the “dealers’ structure”.

The nature of the agreed dealer structure in effect when price ceilings were established is indicated in a confidential document prepared by the Secretary for presentation to the Flour Administrator on December 3, 1941 with a supplement dated February 11, 1942. (Exhibit 40). An extract from this document, illustrating the nature of the structure, will be found in Appendix II. Examination of this Appendix shows that the nature of the structure at the Pacific Coast differed from that in the rest of Western Canada. The Pacific Coast structure was unanimously adopted at the Executive meeting of February 10-11, 1941 (Exhibit 22), the reason for the difference was outlined in the following extract from the above confidential document (Exhibit 40), which describes also the methods used, in one instance, to re-establish the price structure in British Columbia where price conditions had been “far from satisfactory”:

“For a long time prior to February 1941 conditions at Vancouver were far from satisfactory as prices for flour to dealers ranged far below list. Last February milling executives went to Vancouver and spent several days there to bring about a settlement. The result was, among other things, the setting up of the Dealer Structure of (a) Retailer, (b) Chain and Department Stores and (c) Jobber, set out in an earlier part of this survey. This structure was predicated on the zone differential of 40 cents per barrel over the W. Ont., Man., Sask., and Alta. common zone for Vancouver which is founded on actual freight rates.

It is a fact, however, that instead of giving effect immediately to the new basis at 40 cents per barrel over the W. Ont., Man., Sask. and Alta. common zone, market conditions were still so upset that sales of flour to dealers were allowed to continue for a time on the foundation of the carlot basis 10 cents per barrel only over the common zone. This continued indeed until October 22 last.

On October 22 the Vancouver list was advanced 20 cents per barrel as the first step in the direction of the wider task of readjusting all British Columbia zones. Two days later mill executives met in Calgary and completed the realignment (in consultation with members of their respective Traffic Departments) of these British Columbia zones." (Exhibit 40)

The realignment of the structure in this area was not completed until October 22, 1941, which was subsequent to the basic period of the Wartime Prices and Trade Regulations. Consequently the zone differential of 40 cents did not apply during the period of price control; the maximum price permitted was 10 cents over the common zone. A similar situation existed in zones 11 and 12.

As already stated, in the years prior to price ceiling legislation, the various prices under the dealer structure throughout the West were agreed upon by the members of the Western Division. With the establishment of price ceilings, the maximum prices of the members under the dealer structure were all the same, having been reached by agreement.

Throughout the period of government price control the composition of the dealer structure remained essentially the same. By agreement among the members there were some variations such as the introduction into the Country Dealer Structure of the classification "Split car, not more than three ways" at a price differential of 10 cents per barrel over the basic price. Also, in certain zones specific variations were made in the basic price by agreement as illustrated by the minutes of an Executive meeting on September 21, 1943:

"6. Dealer Structure:

THE RECOGNIZED DEALER LIST IS TO REMAIN IN EFFECT WITHOUT ALTERATION IN ALL ZONES.

After an examination of conditions in certain zones, however, the following decision was reached:

In Zones 2, 4 and 5 it is permissible for mills to accept business from city and country dealers at not more than 20 cents per barrel under the recognized dealer list. The sense of this decision is that the minimum carlot (outright sale) basis for Zones 2, 4 and 5 for First Patent Flour 98's Cotton, is \$5.10 per barrel with the usual spreads applicable for all classifications and categories which rest upon it. There is to be no change in the list." (Exhibit 59)

While the Wartime Prices and Trade Regulations established price ceilings, these ceilings constituted *maximum* prices for the commodities concerned. However, as part of the association system of control over prices, efforts were made throughout the period of price control to have all the members observe these ceiling prices as *minimum* prices also, with specific exceptions to meet local conditions as illustrated above. The minutes of Executive meetings are replete with items indicating such efforts and are amply illustrated by the following extracts:

*Minutes of April 21, 1942:*

"Arising out of a long discussion of recent developments in certain centres (Kamloops, Calgary and Trail were cited as cases in point), the following resolution was unanimously adopted.

"There shall be no reduction in the dealer structure by any kind of independent action to meet any local price situation. Each situation as it arises shall be reported to the Secretary as the means to obtain complete Executive action." (Exhibit 45)

*Minutes of October 21, 1943:*

"Prevailing conditions affecting the dealer structure were examined and the following decision reached.

THE DEALER LIST IS TO BE MAINTAINED WITHOUT DEVIATION IN ALL CLASSES AND CATEGORIES OF THE TRADE." (Exhibit 60)

*Minutes of June 22, 1944:*

"A review of general conditions was made. The specific case of conditions in Calgary was examined. Telegrams were sent to all Calgary offices directing immediate return to list." (Exhibit 69)

*Minutes of April 10, 1947:*

"Developments here and there during the past few months were reviewed at great length; present conditions in certain markets were cited; these were used to make the point that there is still room for improvement in order to give effect to the decision, in February, that *sales in each classification of the baker and dealer structure shall be at list in every zone.*"

(As a case in point a certain market in south-eastern Manitoba became the subject of long examination; finally it was agreed that three members in particular would give further study to the problem at once in an effort to provide a satisfactory solution.)" (Exhibit 86)

#### 4. Agreed Prices to Bakers—the "Baker Structure"

The baker structure agreed upon by the members of the Western Division consists of two classifications; carlot buyers and less than carlot buyers. The agreement provided for the carlot price as the basis of the structure and the less than carlot price at a fixed differential of 20 cents per barrel over the basis. This structure applied throughout Western Canada except at the Head of the Lakes where, by agreement, sales in any quantity were to be at the carlot basis.

In the period prior to government price control the price structure was established from time to time by the Executive, as illustrated by the minutes of an Executive meeting on August 24, 1938:

"Agreed to cancel the existing bakers' structure and substitute therefor the following structure basis the close of the market of Wednesday, August 24, 1938 (October Wheat  $\cdot 64\frac{3}{4}$ ).

	BASIS	
	W. Ont., Man., Sask. and Alta.	
	Common Zone	
	2nd Patent 98s Jute	
	Bakers' List	
	<hr/>	
	Terms—30 days	
	Delivered into Bakeshop	
	<hr/>	
October Wheat $\cdot 64\frac{3}{4}$	Carlots 410 bags within 24 hours \$4.60	Less than Carlots \$4.80

Subject to discount of  $\cdot 10c$  per barrel for cash payment 7 days from date of invoice.

No discount or allowance is to be given if baker performs own delivery from car on track or from warehouse as the discount hitherto granted for such performance is now eliminated.

Established zone differentials apply:—"

(Exhibit 3)

The basic price was thus established for the common zones and the existing zone differentials would be added to obtain the prices for the remaining zones.

At the Executive meeting of July 15, 1941 (Minutes, Exhibit 26) "the Secretary was given authority to execute market changes". Accordingly, from that time until wheat price fluctuations ceased to affect flour prices, the Secretary issued to the members notifications of changes in the structure in the following manner:

"TO ALL MEMBERS:

#### BAKERS

The basis (common zone W. Ontario, Manitoba, Saskatchewan and Alberta) is now as follows:

	Carlot	Small Lot
2nd Patent 98s Jute .....	\$4.60	\$4.80
Cash Discount: 2 per cent 10 days		

(This is an advance of  $10c$  per barrel from basis of October 2nd, 1941).

Zone, grade and package differentials apply throughout.



The day of a market change, sales on the then existing current list shall end without fail at the latest at the close of business that day.

Winnipeg, Man.  
October 3rd, 1941

D. P. NOEL"  
(Exhibit 39)

With the introduction of the Wartime Prices and Trade Regulations, the ceiling prices of all the Western members were the same because in the basic period, September 15 to October 11, 1941, they had all been following the agreed prices. On October 28, 1941, the basic type of packaging was changed from jute to two 98-pound cotton bags and remained on this basis throughout the period of government price control.

Notwithstanding the introduction of government price control, as the price of wheat continued to fluctuate below the high point of the basic period, the prices under the baker structure likewise continued their automatic fluctuation until January 27, 1942, when the price of wheat reached the high point of the basic period. Subsequently, subsidies were introduced and wheat fluctuations no longer had any effect on flour prices.

The flour price of the basic period structure remained in effect until May 21, 1943, when by agreement it was reduced 30 cents per barrel throughout Western Canada, as reported in the minutes of Executive meeting of May 20, 1943:

"The baker list, applicable throughout the west, is now 30c per barrel below the recognized list in effect since January 27th, 1942. The change effected is shown in confidential schedule 'B' of May 21st, 1943."  
(Exhibit 53)

This reduction remained in effect throughout the remainder of the period of government price control.

There were other variations in the structure for certain periods, such as permitting delivery of flour to country bakers in pool cars on the basis of the carlot list, provided such deliveries contained a minimum of 100 bags and the baker had a contract with the mill for a quantity of flour in excess of 410 bags.

Throughout this period the minutes contain numerous references to the efforts made by the Western Division to secure maintenance of the agreed structure by all members, as can be amply illustrated by the following extracts:

*Minutes of October 21-22, 1941:*

"A matter relating to bakers' business in the hands of certain Executives was discussed and developed. A review from the Head of the Lakes to the Pacific Coast was made and a preliminary list prepared under the guidance of the Chairman. The matter rests with the Chairman for further development and action with other Executive members."  
(Exhibit 29)

*Minutes of August 24, 1943:*

"THE DECISION FINALLY REACHED IS THAT THE BAKER LIST IS TO BE MAINTAINED IN EVERY PARTICULAR."  
(Exhibit 58)

*Minutes of October 20, 1944:*

"The members of the Executive discussed at length existing conditions and finally all agreed to maintain full list immediately."  
(Exhibit 73)

*Minutes of February 22, 1945:*

"All members pledged their honour that their respective organizations will not offer or make sales of flour within the next thirty days (in effect between now and the next Executive meeting) at less than list."  
(Exhibit 76)

## 5. Agreed Prices to Others—Special Classifications

In addition to the classes of customer comprising the dealer and baker structures there were large buyers who did not come within these structures. Consequently, as part of the system of control over prices, a special classification

for a number of these large buyers was adopted and a price at which they were to be sold agreed upon. The basis for sales to these buyers was the baker structure as illustrated by the minutes of Executive meeting of July 7, 1941:

"3 BAKERS BASIS:

H.B.C. Fur Trade  
Other Fur Traders  
Mining Companies  
Lumber and Timber Companies  
Railways  
Religious and Charitable Institutions  
Hospitals

Agreed that the above classifications shall be sold on the bakers basis. Carlots, f.o.b. cars, Small lots (20c per barrel over carlot basis) f.o.b. shipping point.

Grade and Package differentials apply throughout.

...

HEAD OF THE LAKES:

H.B.C. Fur Trade  
Other Fur Traders  
Mining Companies  
Lumber and Timber Companies  
Railways  
Religious and Charitable Institutions  
Hospitals

Agreed that the above classifications in the Head of the Lakes area shall be sold on the bakers carlot basis for Carlots (minimum 50,000 lbs.) f.o.b. cars, and Small lots (carlot basis) f.o.b. shipping point.

Grade and Package differentials apply throughout."

(Exhibit 25)

The agreement governing sales to this special classification was reiterated and amended from time to time from 1937 on, the last amendment being found in the minutes of the Executive meeting of January 26-27, 1945 (Exhibit 74), when packing houses were added to the list.

Prices to large buyers not coming within this classification were also agreed upon. For example, in the minutes for August 19-20, 1941:

"Organized Hutterite Colonies in Southern Alberta shall be sold on the dealer structure."

(Exhibit 27)

Another classification consisted of the Dominion and Provincial Governments, and during the War included American Government business in Canada in connection with operations on the Alaska Highway and at Churchill, Manitoba. This classification will be discussed in detail in the section of this chapter which deals with tenders to government purchasers.

Where there was no agreement with respect to prices to particular buyers, sales were said to be on an "open" basis, i.e., not subject to list. This is illustrated by the following record in the minutes of January 26-27, 1945:

"It is recognized that sales of flour to macaroni manufacturers are on an 'open' basis."

(Exhibit 74)

## 6. Package Differentials

As we have seen, the basic price in both the dealer and baker structures was established with relation to a specific type of packaging in each case. Also, from time to time, the Executive agreed to restrict flour packages to specific sizes, as recorded, for example, in the minutes of February 22-23, 1938:

"Agreed to restrict the sale and distribution of Hard Wheat (White) Flour to the following sizes:

98s 49s 24s 7s 3½s 2s"

(Exhibit 1)

Price differentials for the various types and sizes of packaging were also agreed upon from time to time, as illustrated by the minutes of February 12, 1941:

"The Chairman and Secretary are to make an up-to-date package differential sheet based on present-day costs. A proper differential is also to be set for paper covers."  
(Exhibit 23)

These package differentials were issued in both "Regular" and "Special" form, the former being applicable to the ordinary domestic market, while the latter applied to special types of packaging, such as double bags and covers, for sales to the northern country where shipments might have to be made over portages. The examination of Mr. Noel on the binding effect of these package differentials was, in part, as follows:

"Q. So that you claim this package differential was figured out simply for the benefit of the members as a ready reference indicator of what the package differential cost might be?

A. As a reasonable, shall I say, additional cost of smaller sizes and of special packing, right.

Q. Was it binding upon members of the association?

A. They were expected to observe it.

Q. . . . After they had made all these inquiries about cost, and all the rest of it, did they enter into an agreement among themselves that they would observe the price that had been decided upon or the differential that had been decided upon?

A. The promulgation of the packaging differentials implied it."

(Evidence, pp. 41-42)

The following list of regular package differentials, while not all-inclusive, is typical:

"2. Package Differentials:

2-98s Cotton .....	BASIS	
4-49s Cotton .....	\$ .15	over basis
2 bales 10/10s C. in J. bale .....	1.20	"
2 bales 14/7s C. in J. bale .....	1.35	"
4 bales 7/7s Paper .....	.60	" "

(Exhibit 40)

With the introduction of government price control any increases in the package differentials could be made only with the permission of the Wartime Prices and Trade Board. In order to conserve supplies of burlap, jute, cotton, kraft paper and coated paper the Wartime Prices and Trade Board by Administrator's Order A. 157 of May 13, 1942, restricted flour packages to specific sizes. When this Order was revoked towards the end of the war, the Executive at the meeting of January 26-27, 1945, agreed to continue with the sizes provided by the Order:

"Administrators' Order A-157 has been revoked. The Order limited sizes of bags and also deleted back printing. The Order specified flour packages to be limited to the following net capacities by weight when packed, i.e., 7's, 24's, 49's, 98's, and 3's in respect to farina, wheatlets, wheat granules, cracked wheat, whole wheat flour, graham flour, pancake flour and edible bran.

In line with the decision of the Eastern Executive, it is agreed to carry on of our own volition with the sizes provided by the Order, the question of back printing being optional."  
(Exhibit 74)

## 7. Grade Differentials

As already explained, the dealer structure was established upon the basis of first patent flour and the baker structure upon second patent flour. Since there are various grades of flour, another factor in the system of control over prices was the establishment of fixed price differentials between such grades. These



differentials were generally agreed upon at Executive meetings and may be illustrated by the following extracts from the minutes:

*Minutes of February 22-23, 1938:*

"Agreed to accept the recommendation of eastern executives to widen the spread to 50 cents per barrel between First Patent and Second Patent (Bakers) Flour by advancing First Patent Flour 10 cents per barrel.

The above decision is to go into effect on the next price change.

Recognized the spread of 50 cents per barrel below the bakers' basis for Second Patent Flour on sales of Whole-wheat Flour to bakers and dealers at Vancouver."  
(Exhibit 1)

*Minutes of August 19-20, 1941:*

"The basis for First Clear Flour in the domestic market shall be 30 cents per barrel below the basis for Second Patent Flour."  
(Exhibit 27)

The Secretary believed that the differentials illustrated above were still in effect at the time of his examination.

(Cracked wheat and purified middlings (wheatlets, wheat granules, farina, etc.) are sold on the same basis as second patent and first patent flour respectively, plus sales tax which is included in the price. Agreements covering the price differentials over second and first patent flour to provide for the sales tax are recorded in the minutes and when price changes have been made the Secretary has informed all the companies. For example, following the increase in the price of flour on decontrol, the Secretary issued the following notice on September 16, 1947, with respect to purified middlings:

"To provide for the Dominion Government 8 per cent Sales Tax, it is now necessary to make the spread for Purified Middlings (Wheatlets, Wheat Granules, Farina, etc.) eighty cents (80 cents) per barrel over the present basis for First Patent Flour.

Please give direction to all offices accordingly."

(Exhibit 261)

With respect to cracked wheat a similar notice was issued, providing for a spread of 70 cents per barrel over the basis for second patent flour.

It was contended that such notices were simply a matter of information to draw to the attention of the members that they should increase their sales tax figures in the prices for these commodities. Such notices assume, however, that the prices of all members are the same; otherwise the amount of the differential to cover the sales tax would vary with the individual member. In the light of evidence of previous agreement on prices and grade differentials, and considering the terms in which the notices were issued, the only possible conclusion is that they served the purpose of implementing the agreement to maintain uniform prices.

With agreement upon the price differentials between the grades of flour and the establishment of basic prices for the baker or dealer structure, the prices for other grades on each structure could be arrived at simply by the application of the agreed differential. For example, the basic price on the dealer structure is established with reference to first patent flour. Assuming this price to be \$5.30, for purposes of illustration, the basic price of second patent flour on the dealer structure would be \$4.80, i.e., 50 cents below the basis for first patent flour.

The grade differentials illustrated above applied to the products of hard spring wheat. The price of pastry flour, which is manufactured from soft wheat, was originally established at a fixed price over the basis for first patent flour, the differential being varied from time to time. By agreement at the Executive meeting of August 19-20, 1941 this method of establishing the price was discontinued:

"It is clearly established that there is certainly no relationship whatever between the market value of Ontario winter wheat and the value of hard spring wheat. The

basis for Pastry Flour distributed in Western Canada should, therefore, be disassociated, by eliminating the use of a mixed spread, from the basis for hard wheat flour.

Market changes in hard wheat flour shall not alter the basis for Pastry Flour.

The basis for Pastry Flour shall be changed, whenever the need arises, by the millers thereof themselves.

(Please advise the Secretary of all such changes)."

(Exhibit 27)

That agreement on pastry flour prices still continued is clear from a price sheet issued by the Secretary on November 27, 1944. It lists the prices and terms to be applied in the several zones for both bakers' and dealers' structures. (Exhibit 179).

In particular areas agreements on prices were made between individual mills, as indicated by the following copy of a telegram dated April 10, 1946, from R. G. Butchart of Maple Leaf, Medicine Hat, Alberta, to the Secretary:

"WE NOW MARKETING UNDER MONARCH BRAND IN SASKATCHEWAN ALBERTA INTERIOR BC ONLY PASTRY FLOUR MILLED FROM WESTERN GROWN SOFT WHITE SPRING WHEAT PRICED AT SIX TWENTY TO BAKER TRADE SIX FORTY DEALER TRADE BASIS NINETY EIGHTS COMMON ZONE (STOP) THIS PRICE DETERMINED AFTER CONSULTATION WITH ELLISONS AND PURITY CALGARY WHICH ARE ONLY OTHER MILLS INTERESTED THIS TYPE FLOUR."

(Exhibit 368)

## 8. Agreements on Tenders

Efforts to secure uniformity of prices on sales by tender which have been described earlier in connection with Association activities in Eastern Canada are also in evidence with respect to Western Canada. Purchases by tenders were made in Western Canada not only by governmental agencies but also by large commercial firms, such as the Hudson's Bay Company. As has been illustrated by extracts from the Executive minutes, this company was placed within the special classification of buyers to be sold on the basis of the baker structure. Since some of their business was for eastern points there was close co-operation between the eastern and western offices of the member companies both directly and through the C.N.M.A. and Western Division.

Evidence of agreement on tenders to this firm appears as early as 1936, as indicated by the following letter of August 13, 1936, from H. Groom of Ogilvie, Montreal, to the Winnipeg office:

"In further reference to our letter of August 3rd. I am glad to be able to inform you that all the Mills have agreed that their Western Offices must ask their Eastern Offices for prices before quoting the Hudson Bay Company, for Flour, etc., to be delivered to points east of Fort William in Ontario and Quebec, exclusive of Labrador and points on the Hudson Bay.

The secretary of our local Association has written to the Secretary of your Association to this effect."

(Exhibit 606)

The available records show that in the intervening years sometimes agreement was achieved and maintained and at other times agreement was reached only to be abandoned, while at still other times no agreement was reached before tenders were submitted. The following references are illustrative of the arrangements which were made or attempted.

For a period in 1944 there was apparently co-operation among the members on sales to the Hudson's Bay Company, as indicated by the following extract from a letter of E. B. Frost, Ogilvie, Winnipeg, to C. J. Kent of the Edmonton office on March 18, 1944:

"Confidentially I am glad to tell you that at the proper agreed Association prices we here are already getting some of their business for the North and so are Montreal. It is far better to have this business at our agreed price than to do as we have done during the past three or four years, take it at practically no conversion. I think you will agree."

(Exhibit 303)



A little later in the year complaint was made that the agreed basis of tendering had not been followed in one case and Geo. MacLean, Division Sales Manager, Ogilvie, Winnipeg, reported to E. B. Frost on May 2, 1944:

"As a result of these negotiations, and at a Meeting held in Mr. Noel's office on January 5th, 1944, at which a representative of each Mill was present, complete agreement was reached on the affirmation of the decision reached by the Executive in the manner in which this Hudson's Bay Fur Trade business was to be handled.

At this January 5th Meeting in Mr. Noel's office it was further agreed by all representatives that during delivery season, when and if they secured an invitation to tender, on any of this current Hudson's Bay Fur Trade business, they would consult the Secretary to first check on agreed prices and then file their tender through the Secretary's office so there would be no possible chance of any slip-up on the agreement and prices reached.

In early April this year, via telephonic communication, we understand five Mills received invitations to tender on 4,600 bags of flour, along with rolled oats and oatmeal for Moosonee, and 1,952 bags of flour, sundry feeds and cereals for Churchill—the only Mill not receiving this invitation we understand was Western Canada Flour Mills as back in January they had not invited same.

After consultation by the respective Mills with their Eastern offices, tenders for Moosonee and Churchill were sent in by us under date of April 12th, and we understand four other Mills sent their tenders in at approximately the same time, all filed through the Secretary's office as agreed, and at agreed prices. The Moosonee prices were tendered at prices agreed upon by Eastern Executives of the Mills tendering.

Through Mr. Noel I learned that the Winnipeg office of Western Canada Flour Mills received a wired reply on April 19th and immediately tendered on this Moosonee business to the Hudson's Bay Fur Trade Depot, Winnipeg, but at that time Mr. Noel was never consulted nor did he, or anyone else, know that this Western Canada tender was being submitted."

Mr. MacLean pointed out that, while the Western Canada tender on rolled oats and oatmeal was absolutely in line, on flour they had quoted below the other members and had obtained the business. He went on to say:

"Had they followed this practice agreed on at the January 5th Meeting at which Western Canada were represented, if any error did occur in the figuring on the part of their Toronto office (which is difficult to appreciate) it could have been caught and the present embarrassing situation avoided wherein not only has a certain amount of confidence been destroyed, but the good work done early in April on selling Hudson's Bay on the idea that the prices they received from the other five Mills were absolutely the best that could be quoted and that they could expect, now is to an extent thrown into the discard to the embarrassment of ourselves, and I imagine to the other four Mills who tendered around April 11, 12, and 13th.

This is a most regrettable incident indeed, especially happening at a time like this when our Western Association is acting and functioning to a higher degree of perfection than for many, many months." (Exhibit 309)

In reporting this incident to Mr. Groom, on May 9th and 10th, 1944, Mr. Frost stated that he had discussed this with the Western Canada company and had been informed that the low quotation had been given in error. At the same time Mr. Frost gave the following report with respect to the tenders for delivery to another Hudson's Bay Company post:

"You will be very glad to know that the prices were all the same and there was no break in the price structure by any of the mills who tendered." (Exhibit 312)

During the 1930's when purchases of flour were made by Saskatchewan municipalities for relief purposes there appear to have been efforts made by members of the Association to secure uniformity in prices in quotations given for such business. In the available records the first evidence of agreement appears in 1936, as illustrated by the following extract of a letter of September 15, 1936, from D. P. Noel to J. Sangster (Western Canada) Winnipeg:

"I confirm my telephone conversation with you this afternoon during which I indicated I had received confirmation from all mills that the Municipality at Frontier would be quoted on the basis of \$6.10 per barrel for a carlot of first patent flour in cottons, sight draft attached to bill of lading." (Exhibit 435)



Agreements on uniform prices to be quoted to Dominion and Provincial government agencies were also entered into at various times. Prices agreed upon were generally related to the structure of bakers' prices. While there were periods when no agreements on prices were effective and prices were, as it is termed, on an "open basis", there appear to have been continuing efforts to reach and maintain uniform quotations on this class of business. In the minutes of October 24, 1939 the following appears:

"Effective November 1st, 1939, the following rule applies:

Quotations for flour on all Dominion and Provincial business throughout Western Canada shall be on a net cash basis of 50c. per barrel under the bakers' basis, applicable to the established zone where delivery is to be made, strictly according to quantity and rate of delivery required. The net basis is for delivery of flour in carlots or small lots, as the case may be, f.o.b. railway point, with no allowances of any kind.

Tenders in the addressed envelopes (unsealed for purpose of examination) are to be sent to the Secretary for him to post." (Exhibit 14)

The following appears as item 6 in the minutes of September 22, 1942:

"It was agreed to make no change in the list for Government business, Dominion and Provincial. (As the result of this decision a list dated September 22nd, 1942, is being issued by the Secretary establishing the basis which has been in force since January 27th, 1942)." (Exhibit 49)

Reference has already been made to the situation that at certain times members gave quotations on government tenders on an "open basis". On being asked to explain the "open basis" the Secretary replied:

"A. Quite obviously the members met and admitted to each other that they were quoting all kinds of prices and, in other words, that the list for this particular category was not being observed. So that—

'Agreed that quotations on flour to dominion and provincial institutions shall be on an open basis until further notice—'

was simply admitting that condition of their sale.

Q. And meaning that in future the bids to these customers would be on a competitive basis?

A. Yes, quite so; and it implied that they had been doing so." (Evidence, p. 60)

According to the available minutes, this business was on an open basis approximately fifty per cent of the time in the years 1938 and 1939. The minutes indicate that subsequently the only other period in which it was on an open basis was between February and May 20, 1943. On the latter date agreement was again made to maintain list prices.

In order to ensure adherence to the agreements on tenders various methods were adopted. On November 19, 1937, a regional group meeting at Medicine Hat, Alberta, reaffirmed that original tenders or copies were to be sent direct to the Secretary.

The minutes of October 24, 1939 (Exhibit 14), after establishing prices, stated:

"Tenders in the addressed envelopes (unsealed for purpose of examination) are to be sent to the Secretary for him to post."

On being asked if this system was followed, Mr. Noel replied:

"A. That system was followed for a certain time.

Q. What was the purpose of that?

A. The purpose was for me to see the tenders and to see that they were on the basis of the list agreed for that type of business.

Q. On the basis of the decision taken at that same meeting?

A. Exactly."

(Evidence, pp. 93-94)

It was stated in evidence that the system of filing tenders through the Secretary was employed off and on, would be allowed to lapse and would be revived again. It was also contended that when the system was operative it

was not always adhered to. One witness stated that his company had discontinued filing tenders through the Secretary when it was found that others were cutting the price. Another took the position that there was no agreement to do so, but for a period of time, owing to suspicion existing among the members, some of the tenders were sent to Mr. Noel for sealing and forwarding. Obviously the system in some form continued at least until 1945, as illustrated by the following letter of June 27, 1945, from S. E. Knight (Robin Hood), Calgary to D. P. Noel:

"We are attaching hereto copy of tender which we have submitted to the Department of Munitions and Supply at Edmonton, Alberta. After you have examined this we should appreciate your returning same to us for our files." (Exhibit 436)

Mr. Noel replied on June 29, 1945:

"Everything appears to me to be in apple-pie order." (Exhibit 436)

Arrangements regarding quotations on government business were apparently still effective in 1947. On April 19, 1947, the Secretary wrote W. J. Henning (Robin Hood), Winnipeg, informing him that a member had complained that Robin Hood was making sales to the Saskatchewan Government Purchasing Agency on the basis of bakers' carlot list irrespective of quantity. In a Robin Hood inter-office memorandum of April 22, 1947, from W. J. Kennedy, Moose Jaw, to W. J. Henning, Winnipeg, Mr. Kennedy commented on this complaint:

"This information is not correct. We sell to the Saskatchewan Fish Board out of Prince Albert and have been charging them \$5.00 per barrel net for Robin Hood. We have not delivered anything but small lots to the Fish Board and they have all been at the correct price.

Looking through the files, we notice where on the 20th of January we sold a car to the Purchasing Agency at Regina for delivery to the Mental Institute at North Battleford and the price on the 600 sacks was \$4.30 per barrel.

If the party who registered the complaint will advise further and tell us where the sale was made at, we will be glad to investigate further but we have checked sales made on March 12th and 20th covering three shipments, and they are all invoiced at proper basis of \$5.00 per barrel." (Exhibit 370)

During the recent war there were considerable purchases of flour in connection with military and other operations in northern Canada, including the Alaska Highway and the United States Army detachments. Among members of the Association the term "American business" was applied to purchases of flour in connection with the latter activities. The system of agreement on uniform tenders and filing tenders with the Secretary for examination and mailing closely paralleled that used on Dominion and Provincial government business. The first evidence of agreement appears in the minutes of the Executive meeting of August 6, 1942:

"A unanimous decision was reached on the subject of American business. Effective immediately the list for Government business Dominion and Provincial will apply to it. Zone (3 and 6 to 15 inclusive) grade and package differentials shall apply throughout. The special package differentials issued by the Association October 30th, 1941, shall apply on double or other special sacking.

Tenders on American business shall be, however, exempted from the rule of being placed in the hands of one person for inspection and mailing. Each mill will mail its tenders direct." (Exhibit 48)

At the meeting of October 20, 1942 (Exhibit 50) it was decided by common consent that tenders were to be placed in one person's hands for examination and mailing. The minutes of November 17, 1942 (Exhibit 51) provided that Canadian and United States civilian contractors engaged in construction work linked with American business were to be quoted on the basis for Government business. During the period February to May 20, 1943, as with Dominion and Provincial Government business, this business was on an open basis. According to



the Minutes of May 20, 1943 (Exhibit 53) the members again agreed to maintain list and restored the previous arrangements, of notification to the Secretary or regional group. Finally the minutes of June 22, 1944 (Exhibit 69) provided that original tenders for Western Ontario, Manitoba, Saskatchewan, Alberta and Interior British Columbia were to be sent to the Secretary for examination and mailing and also that official acceptances and orders received by the members were to be sent to him for examination.

In his evidence W. P. Noble stated that even when this business was not on an open basis evidently somebody did cut prices at times. The documentary evidence also gives some indication of price cutting. There is no question, however, that the agreement was operating with complete effectiveness at times. Indicative of this is the following extract from a letter of November 14, 1942, from S. P. Forbes (Quaker) Edmonton, to W. P. Noble:

"Regarding the tenders for the United States Army at Fort St. John. We have already advised you that it was discovered when they were opened, they were all on the same basis, so Col. . . . and Lt. . . . decided to cut the cards to see who got the business. Four of the six mills which quoted were eliminated after several cuts and the two remaining were Lake of the Woods and The Quaker Oats Company. They again cut the cards and the 10 of Spades for Lake of the Woods and King of Diamonds for The Quaker Oats Company turned up. It was then decided they had sufficient flour on hand to last them anyway until they sent out new tenders on which you have again quoted." (Exhibit 205)

On the second tender the quotations by Association mills were again all the same, as indicated by the following extract from Mr. Noble's letter of November 3, 1942, to the Export Sales department of his company at Chicago, Illinois:

"U.S. Army bids, I understand, were due to be opened October 31. The first bids were cancelled and they asked for second quotations from the mills. All the Association mills quoted the same price through one member at Calgary. Therefore, I don't think there was any room for chiselling." (Exhibit 202)

The efforts of the members to obtain this business were not successful, as they were underquoted by a small mill which was not a member of the Western Division. In the same letter, Mr. Noble pointed out that Quaker had been underquoted \$50 by one of the members on a tender to a construction company at Fort St. John, B.C., and stated that he had written the Secretary to obtain particulars of this member's contracts with the particular company.

On July 26, 1943, Mr. Forbes reported to Mr. Noble that there seemed to be a tremendous upheaval on flour prices and that the Quaker agents had been underquoted on business on which they had quoted too low by 20 cents per barrel (Exhibit 216) which had been made owing to a misunderstanding with regard to the correct price. However, in a letter of August 20, 1943 to Mr. Forbes, Mr. Noble reported that he had been informed by Ogilvie, Medicine Hat, that they were quoting full list price to the North West Purchasing Limited (the purchasing agent for this business), and had obtained an order a few days before on the correct basis (Exhibit 219). From this it would appear that any irregularities had been straightened out.

As has been illustrated in this section, the control over flour prices exercised by the Western Division was a most complete one. Having agreed upon a system of market changes where applicable, zone, package and grade differentials, composition of the baker and dealer structures, special classification of buyers, and tenders to government and non-government purchasers, by the simple act of agreeing upon basic prices for the dealer and baker structures, prices were automatically established for the members throughout Western Canada.



## 9. Decontrol

When price ceilings on flour and millfeeds were suspended in September, 1947, the members of the Western Division increased the prices uniformly by \$4.05 per barrel and \$10 per ton respectively. It was contended by those examined that these increases had not been arrived at by agreement among the members.

With respect to the question of agreement, the following extracts from the minutes of Executive meetings are significant:

"The Executive considered the preparations that should be made in anticipation of a change at any time in Order-in-Council P.C. 3922, 'authorizing drawback to flour millers for the crop year 1945-46', and in other related regulations. The Secretary was directed to write Mr. Murphy of Montreal setting out, for examination by the Eastern Executive, the opinion expressed as to the added cost factors, over and above wheat and millfeed values, which should be taken into account on 'decontrol' of flour in the domestic market."  
(Minutes of February 6, 1947, Exhibit 84)

"The Executive again considered the preparations that should be made in anticipation of 'decontrol' and recognized that work should be undertaken to advance as far as possible a draft of a package differential list. The increased cost of bags for feed would also have to be recognized as a related factor."  
(Minutes of March 6, 1947, Exhibit 85)

It was stated in evidence, however, that no formal or informal meetings of the Executive were held between April 10, 1947, and the date of decontrol. Maple Leaf, Ogilvie and Purity increased their prices on instructions from their head offices in the East; W. J. Henning of Robin Hood stated that the increases by his company were decided upon by himself after consultation with R. A. Henderson, Vice-President, Montreal; W. P. Noble, Quaker, stated that on reporting to head office he was instructed to meet the already announced increases of another company; T. G. Jones, Lake of the Woods, stated that instructions with respect to the amount of the increases had been received from G. H. Booth, Western Manager.

While there is no proof in the record that the members of the Western Division agreed on these uniform increases in price in September, 1947, there is evidence that in the case of five member companies the increases were ordered by head office or were decided upon after consultation with head office. In each instance the advances were the same as those made in the East and all these member companies in the East advanced their prices by exactly the same amounts.

## VI. PRICE AND OTHER AGREEMENTS IN WESTERN CANADA MILLFEEDS, ROLLED OATS AND COARSE GRAINS

### 1. Millfeeds

As with flour, there has been a system of control over prices of millfeeds sold by members of the Western Division. This control has been generally exercised by the Executive, but in specific instances agreement has been made by sales managers or regional groups. For example, the minutes of an Executive meeting of September 23, 1938 (Exhibit 606), state that "certain competitive conditions at the Head of the Lakes" were considered and it was decided to arrange a meeting of sales managers having jurisdiction over this area to correct the existing situation. The meeting was held on October 14, 1938, and the minutes (Exhibit 5) show that agreement was reached on a price basis for both bran and shorts.

The minutes of the Executive meeting of November 28, 1939, indicate that the actual establishment of millfeed prices for the member companies was delegated to certain mills:

"The basis of feed values as now established in the principal markets of the West is as follows:

	Ft. William and Winnipeg	Moose Jaw	Calgary	Vancouver
Nov. 28th				
Bran .....	\$19.00	\$16.50	\$15.00	\$23.30
Shorts .....	20.00	17.50	16.00	24.30
Middlings .....	21.00	19.50	18.00	26.30
Less 2 per cent Cash Discount.				

It was not found possible to establish the means whereby Eastern domestic values and export values could be determined on a Fort William basis and the result by general consultation made to be reflected relatively in these principal Western markets. As the matter stands at present, Winnipeg market values are established by mills at Winnipeg and/or Keewatin. Calgary market values (and consequently Vancouver market values) are established by a Calgary mill." (Exhibit 15)

In the summer of 1941, by virtue of an informal arrangement between the Wartime Prices and Trade Board and the milling industry the price of millfeeds was fixed to avoid price increases which might otherwise have been made. This arrangement was terminated at the end of August in that year and prices were then subject to freedom of movement until the introduction of government price control in December, 1941.

In 1941 price notifications were sent out weekly by the Secretary setting out the basis of feed prices to dealers. The prices for Fort William and Winnipeg were comparable to the Eastern Dealer basis; they were lower by the amount of the freight rate from Fort William to Montreal rate points. These prices were net, while the prices for Moose Jaw, Calgary and Vancouver were subject to a cash discount of 2 per cent for payment within ten days. With the institution of government price control, the ceiling prices were the maximum prices established in the basic period. However, for a time prices still continued to fluctuate below the ceiling. The system of weekly price notices from the Secretary was discontinued on November 14, 1941 and thereafter notices were sent out only when changes occurred, the last notice being on April 11, 1942, at which time f.o.b. prices were at the ceiling.

As members of the Western Division were selling millfeeds on the same price basis prior to the imposition of price ceilings in 1941, their maximum prices under the wartime regulations were uniform except in the matter of

delivered prices in Western Ontario, Manitoba and Saskatchewan. In these regions the delivered prices of Robin Hood differed from those of the other members, whose prices were uniformly \$1 per ton below ceiling from December 3, 1941 on.

By Administrator's Order A-651, March 22, 1943, the Wartime Prices and Trade Board established maximum prices for millfeeds, both f.o.b. processor's mill and delivered, throughout Canada. On March 21, 1947, by Administrator's Directive issued under Order A-2315, the Board permitted an advance of \$1.25 per ton to provide for an increase in the cost of jute packing.

It should be emphasized again that the Prices Board set *maximum* prices, and gave no authority to sellers to combine to prevent price reduction below that level. Unfortunately, however, there was agreement among the members of the Western Division not to sell below the maximum prices permitted. For example, arising out of a complaint against Lake of the Woods, T. G. Jones of the Winnipeg office wrote to D. P. Noel on May 26, 1947:

"We wish to confirm our telephone conversation with you this morning in respect to Millfeed prices at Rainy River and Fort Frances, in which it has been stated we are not reflecting the recent advance due to extra cost for bags of \$1.25 per ton.

This accusation is definitely wrong as we are maintaining the list price on Millfeeds in accordance with the recognized schedule for that district. If the complainant knows of any case where prices are not being maintained would they kindly be more specific and we will investigate the alleged condition." (Exhibit 433)

When prices were not being maintained efforts were generally made to remedy the condition. For example, in the minutes of the Executive meeting of August 18, 1944, it was stated:

"Members of the Alberta group shall take immediate steps to examine the basis of sales of coarse grains and millfeed, Interior British Columbia, and so be prepared to resolve the common problem at the next Executive meeting." (Exhibit 70)

As the result of a complaint, D. P. Noel wrote W. J. Henning (Robin Hood) on June 28, 1947, in part as follows:

"The sale of wheat millfeeds is governed by Order A-651 of March 22, 1943, and Feeds Administrator's directive on Order A-2315 effective since March 21, 1947. The directive permitted an advance of \$1.25 per ton to provide for the increase in the cost of jute bags. The Calgary basis for wheat millfeeds packed in jute is now as follows:

Bran .....	\$22.75 ton
Shorts .....	23.75 "
Middlings .....	26.75 "

Can you account for the report that your Company is selling millfeeds in British Columbia at \$1.00 per ton below list." (Exhibit 370)

On June 30, 1947, Mr. Henning replied in part as follows:

"Along with some other mills we have always definitely refused to make any comment on sweeping accusations. If we have any complaints to make against other mills, we do so in a specific manner, quoting chapter and verse.

We could, if we so desire, make a categorical denial in this instance but we refuse to make any comment in connection with this situation or reply in any instance to any of this type of accusation of violation of regulations." (Exhibit 433)

Owing to shortage of jute in the latter part of 1946 it was sometimes necessary to arrange to pack millfeeds in paper. Application was made to the Feeds Administrator of the Wartime Prices and Trade Board and on January 16, 1947, the members of the Western Division were informed that a price of 50 cents per ton under the jute basis had been established by the Administrator for millfeed packed in 50's paper and sold on the domestic market. Agreement



among the members not to sell below this price is indicated by the following letter of February 11, 1947, from D. P. Noel to R. J. Marriott (Purity) of Calgary:

"Please give the following report your attention and advise:

'It is reported to us that the Saanich Farmers' Exchange at Saanichton, B.C., are being allowed \$1.00 per ton under burlap for paper Shorts by the Purity Flour Mills. We were under the impression that it is definitely agreed by all Mills that the maximum discount under burlap feed bags for paper would be 50 cents per ton.' The recognized differential (approved by the Feeds Administration) is indeed fifty cents (50c.) per ton." (Exhibit 370)

Notwithstanding the agreement there were some differences in members' prices in two areas. In the Zone 5 Alberta area there was a difference of \$1 per ton between the delivered prices of Robin Hood and Purity and the other members of the Western Division. This was due to a difference of opinion in interpretation of Order A-651 and the evidence does not indicate whether this difference was removed. There was also considerable price cutting at the Head of the Lakes by certain mills, as illustrated by the following extract from a letter of November 26, 1946, from E. B. Frost to V. W. MacLean of the Fort William office of Ogilvie:

"I would like to think that some day—maybe next spring—we will hold a meeting of the millers and have this question of feed prices at the Lakehead adjusted one way or the other. There is no reason why we should let any of our competitors get away with anything like this." (Exhibit 271)

The evidence does not indicate whether or not this situation continued.

## 2. Rolled Oats

Although in Western Canada there are only four firms manufacturing rolled oats, agreements similar in purpose and effect to those already described for flour have been made by members of the Western Division with respect to rolled oats. The four members who manufacture rolled oats are Ogilvie, Purity, Quaker, and Robin Hood. In the Western Division their mills are known as "cereal mills" as distinct from the others which are known as "non-cereal mills". Representatives of the cereal mills meet from time to time, generally following meetings of the Executive, but these meetings are not as frequent as those of the Executive. They are usually attended by the Secretary and minutes are generally kept. It is not considered necessary to describe in detail the history and nature of the agreements which have been made from time to time, insofar as they are revealed in the records available supplemented by oral testimony. Their essential character will be evident in the references which follow.

Since some members do not manufacture rolled oats there have been a series of agreements applying to the sales by the so-called cereal mills to the non-cereal mills. These agreements have applied to the prices to be charged non-cereal mills on their purchases of rolled oats and also to the distribution of such business among the rolled oats manufacturers. The agreements on prices provide for two distinct bases, described as the western and eastern basis respectively. The western basis has been in effect for several years and is set out in the minutes of the Cereal Members meeting of February 15, 1944:

"(a) Continue to restrict, according to established rule, the mill basis (20c per 80 below the jobber list) to sales of Rolled Oats in carlots to non-cereal mills.

(b) Use, according to established rule, the jobber list for sales of Rolled Oats in less than carlot quantities to non-cereal mills.

(c) Use the basis for jobbers in effect at present for 2 9/5's or 3 6/5's Rolled Oats paper in kraft bale included in sales of Rolled Oats in carlots or in less than carlot quantities to non-cereal mills." (Exhibit 65)

The eastern basis applies to sales of rolled oats to Lake of the Woods at Keewatin, Ontario, which reships the bulk of its purchases to Eastern Canada. This basis is 10 cents per 80 pounds below the jobber list and has been in effect for several years. It is developed from the Montreal wholesale price, reduced to a Fort William basis by deduction of the freight costs from Fort William to Montreal. In 1936 arrangements were made by Mr. Noel to have Mr. Murphy (C.N.M.A. Secretary) notify him of any changes in the Montreal wholesale price. These notifications were generally given by telegram, upon receipt of which Mr. Noel would prepare and forward a price notification to the cereal mills, as illustrated by the following extract from the notification of July 11, 1941, which was followed by a listing of the specific prices agreed upon.

"Effective yesterday the Montreal wholesale basis has been established at \$5.60 per 2x80's Jute. From now until further notice the Keewatin basis, is, therefore, as follows:" (Exhibit 437)

This practice continued up to the introduction of government price control, after which they were issued only occasionally, as when changes were made from all rail to lake and rail freight basis and vice versa each year, and when price changes were permitted by the Wartime Prices and Trade Board.

Purchases of rolled oats by the non-cereal mills in Western Canada represent a very small proportion of the production. At the same time, as indicated in the evidence of W. P. Noble, agreement on uniform prices and pooling of sales is of importance in relation to the maintenance of the over-all price structure on rolled oats in Western Canada.

(1) THE ROLLED OATS POOL. In addition to the agreement regarding price, the cereal mills have agreed upon a division of sales to non-cereal mills. This arrangement, known as the "rolled oats pool" has been made up of two divisions, described as the Western and Keewatin pools, which have been operated separately. The Western pool has covered sales made to non-cereal mills in Western Canada, and the Keewatin pool has covered sales made to Lake of the Woods at Keewatin.

Prior to 1938 the latter was known as the Kenora-Keewatin pool, but in that year the Maple Leaf mill at Kenora, Ontario, was destroyed by fire and was not rebuilt. The date of the beginnings of the pooling arrangement is unknown, but it did extend back into the operations of the Western Millers' Association which was the predecessor of the Western Division.

The reason for establishment of the rolled oats pool was given by W. P. Noble as follows:

"... As I said earlier, it was thought by the rolled oats millers that this should be divided equitably among them. Otherwise, if it is left and the price was set at a certain figure—if this business was left open, as it has been in the past at times it gets down to cutthroat business, and your non-cereal mills are in a position to sell rolled oats to better advantage than the man who makes them." (Evidence, p. 454)

Under the arrangement five-sixths of the sales in each pool were divided equally among Ogilvie, Quaker and Robin Hood (i.e., five-eighteenth each), while Purity was allotted one-sixth. The practice has been for the cereal mills to notify the Secretary of their sales in each pool for each month. He has kept a running record of these returns, issuing a cumulative statement every month showing sales by each mill in each pool together with the quota of sales to which each is entitled.

The key person in the operation of the pool has been the Secretary. In addition to keeping the cumulative record of sales and quotas his duty has been to endeavour to bring the pools back into balance when sales got out of line with the quotas. On occasion he has suggested to the non-cereal mills that they direct their purchases to the cereal mills which are under their quota, in order



to bring about a balance. In his evidence, however, Mr. Noel emphasized that this did not have to be done at all times and stated that in actual practice it was surprising how often, over a period of time, sales and quotas would achieve a reasonable balance (Evidence, p. 1090). Nevertheless there has been agreement on methods to ensure the keeping of the pools in balance, as illustrated by the following extract from a letter of December 4, 1939, from C. Ritz of Minneapolis to D. P. Noel:

"... At the time these pools were formulated it was understood that when a mill delivered above its quota the Secretary would ask that mill to raise its price sufficiently to divert the business to the mill or mills who were delivering less than their share. Are you following out this plan and are the members adhering to the understanding?"  
(Exhibit 427)

Just prior to this, on November 22, 1939, E. B. Frost (Ogilvie), Winnipeg, had written to Mr. Noel in part as follows:

"I notice from last statement submitted that we are considerably out of line and until this situation is adjusted, we will follow out your suggestion and on receipt of any enquiries from Maple Leaf, Medicine Hat, will increase our price by 25 cents per barrel."  
(Exhibit 427)

In his evidence Mr. Noel stated that to the best of his knowledge this was the only occasion on which this method was used (Evidence, p. 1086). In the same connection R. J. Marriott (Western Canada), Calgary, wrote Mr. Noel on November 30, 1939, in part as follows:

"Personally, Mr. Noel, I prefer to stay with our own arrangement when we are in a position whereby we cannot offer rolled oats to the Maple Leaf at Medicine Hat owing to the fact that we are over-delivered on our quota, and that is to tell them frankly that we cannot accept their orders."  
(Exhibit 427)

While it was stated that the pooling system was entirely a cereal mill arrangement, in view of the above there does not seem to be any doubt that the non-cereal mills have been willing or unwilling parties to it. Since the cereal mills are their only source of supply in Western Canada, it would appear that they have had no other choice.

(2) AGREEMENT ON PRICES TO OTHER BUYERS. The cereal mills have also made agreements as to the prices at which sales were made to the trade and during the periods when such agreements were operative the non-cereal mills, Lake of the Woods and Maple Leaf, were parties to the arrangements with the four cereal mills on prices and subsidiary matters relating to bulk or sacked rolled oats. In this connection, L. A. Eagleton (Maple Leaf), Winnipeg, stated:

"Q. Is there any agreement between the mills who sell rolled oats, concerning prices—the price at which rolled oats are to be sold to the dealers?"

MR. SWIFT [Counsel for Maple Leaf]: Between the mills, the manufacture of the rolled oats?

Q. MR. AHERN: Not only the manufacturers, the mills also who sell, like Maple Leaf. It does not manufacture but it purchases and re-sells. Is there any agreement concerning the price of rolled oats to dealers?

A. Do you mean by that that there might be an established dealer price?

Q. Yes.

A. By the rolled oats millers and that we would fall into line with that price?

Q. Yes.

A. I think that is correct."

(Evidence, p. 239)

The system of price fixing adopted was similar to that used for flour.

A few copies of minutes of cereal members' meetings were available, the first being dated February 20, 1940 (Exhibit 460). However, in the minutes of Executive and regional meetings prior to this period there are references to agreement upon prices and subsidiary matters such as cash discount and cartage allow-



ance. The first reference to agreement is found in a letter dated July 18, 1936, from E. B. Frost, Winnipeg, to H. Groom (Ogilvie), Montreal, in which he stated that rolled oats prices were agreed upon (Exhibit 606).

To maintain uniformity of price it was necessary to agree upon the sizes of packages. At a meeting of May 31-June 1, 1937, the cereal mills agreed that rolled oats should be distributed only in the following containers: 80's, 20's and 15/6's (i.e., fifteen six pound bags). The non-cereal mills and Ellison were informed of this decision by the Secretary (Exhibit 437) and were requested to arrange their subsequent purchases accordingly. During 1941 and 1942 individual cereal mills introduced the following sizes packed in paper:

5/6's .....	i.e., five six pound bags
6/5's .....	i.e., six five pound bags
9/5's .....	i.e., nine five pound bags

These sizes were apparently introduced in violation of the earlier agreement on package sizes. The six-pound size, paper and kraft, was eliminated in 1945 by agreement at the cereal members' meeting of March 22, 1945.

Evidence of agreement as to size of containers and prices of package oats, as distinct from sacked or bulk rolled oats, is found in correspondence passing between the cereal mills and the Secretary in 1936. This dealt with the introduction of the 48-ounce package in substitution for the 55-ounce package which had been in use up to that time. In his letter of October 26, 1936, to the Secretary, W. H. White (Quaker), Saskatoon, set out his understanding of the agreement:

"It has been my understanding right along that this matter was entirely settled some time ago by mutual agreement in the East. My understanding of this agreement is as follows:

'That none of the 48 ounce variety could be shipped prior to October 15; that either 48 or 55 ounce might be shipped between October 15 and November 1st, that no 55 ounce packages could be shipped on or after November 1st.'

This agreement was reached in the East some six weeks ago and it has been my understanding right along that this agreement would have been passed along by the East to representative Western managers.

We, ourselves, are proceeding strictly in accordance with the above arrangement. If it develops that any others are not, it will be a serious breach of confidence.

As to the relationship of the prices of the new packages to the old, it has also been mutually agreed that no change whatever is to be made in price. That is, we will continue to sell the 48 ounce package at exactly the same price as we are now selling the 55. In fact, the very purpose of this move was to avoid having to increase prices."

(Exhibit 437)

The agreement upon prices provided for a price for Quaker higher than for that of the other three cereal mills, as an offset apparently to the greater advertising activities of Quaker. The history of the agreement is contained in a letter of April 9, 1937, from W. H. White to the Secretary, reading in part as follows:

"At the go-off, I think it might be just as well to review the history of this thing very briefly.

Prior to my coming to Saskatoon at the end of 1930, there never had been any spread whatever between Quaker and Robin Hood in package oats. Between Ogilvies and Quaker and Western Canada and Quaker modest spreads did exist but without any fixed regulation or understanding. A year or so after I had been here I agreed for the very first time to hold our price at 10 cents per container 12's over Robin Hood, Ogilvies and Western Canada. This was done in the belief that it would help to stabilize prices and in recognition of our greater advertising activities. This 10 cents spread was maintained in theory at least until the late fall of 1935 when we reluctantly and under protest agreed to widen it another 10 cents or from 10 cents to 20 cents. Mr. Sellers and Mr. Horn will remember that we agreed to this 20 cents spread under protest and if the records are referred to, they will show this to be a fact."

(Exhibit 437)

At the cereal members' meeting of January 21, 1937, Quaker had given notice that they were no longer inclined to continue the differential of 20 cents per case over competitive brands and offered for consideration a differential of 10 cents

per case. There was considerable correspondence among the members in an effort to deal with this request, but the members were unable to reach an agreement. Finally the matter was placed on the agenda of the Western Division meeting of May 31-June 1, 1937, which was held in Montreal. Agreement was apparently reached at this meeting, as H. Groom (Ogilvie), Montreal, in a letter of July 8, 1937, to W. A. Donnelly (Quaker), Peterborough, said in part:

"... I note that when the Western representatives of the mills were down here during the first week of June they got together and advanced the price of package oats in the West. Apparently, Robin Hood, Western Canada and ourselves are selling 12 x 48's plain at \$2.30 wholesale and 12 x 48's premium at \$3.20 wholesale.

I presume your prices are ten cents per case higher."

(Exhibit 626)

This differential was maintained with some interruptions until March, 1947, when authority was granted individual companies to increase the price of rolled oats. Joint efforts were then made by the cereal members of the Association to eliminate this differential.

In the latter part of 1938 and in 1939 the agreement on prices of rolled oats appears to have become largely inoperative, bulk prices being reduced by as much as 50 cents per 80 pounds and package by as much as 65 cents per case of 36 pounds. For a short period Quaker also eliminated the price differential which had existed between Quaker products and those of the other cereal mills. Early in 1940 Quaker informed all concerned that, owing to the previous price cutting, it had decided to disregard the conference as far as rolled oats prices were concerned and in that connection had practically severed its connection with the Association. It was indicated that if its representative attended a forthcoming meeting it would be simply in the capacity of an observer. In spite of this, Quaker apparently continued to co-operate.

In a letter of February 7, 1940, Charles Ritz wrote from Minneapolis to G. C. Whipple of The Quaker Oats Company, Chicago, informing him that reports from his Western Canadian people regarding package oats indicated that

"... more harmony prevails now than has been the case for many months."

(Exhibit 371)

Quaker's continued co-operation is also indicated by the minutes of cereal members' meeting of February 20, 1940, which contains the following:

"Quaker announced a formal change of policy. Having done so, they nevertheless declared their intention to observe present arrangements between members with the single reservation that they place themselves on precisely the same basis as the rest for Package Oats in Winnipeg."

(Exhibit 460)

The effect of this apparently was to reinstate the 10-cent differential except in Winnipeg, as in a letter of September 13, 1941, to H. Groom, Montreal, E. B. Frost (Ogilvie), Winnipeg, said:

"Insofar as Robin Hood and Western Canada are concerned, our prices are exactly the same, one price. Insofar as Quaker is concerned, in Western Canada their price is 10 cents per carton over Ogilvie, Purity and Robin Hood with one exception, Winnipeg, where their price is exactly the same as the rest of us."

(Exhibit 606)

With respect to bulk or sacked rolled oats, K. A. McLennan, Moose Jaw, reported to R. A. Henderson (Robin Hood), Montreal, in a letter of April 28, 1941:

"About a year ago or possibly it might have been a little longer, Quaker notified all concerned that they were disregarding any conference. We have had a rather unsatisfactory situation on bulk oats, but I think we have got it cleaned up."

After referring to the price cutting in Manitoba and Alberta, he went on to say:

"In order to get this situation straightened out, and also in an effort to keep the arrangement known as the Western Pool, whereby we have a basis for selling the non oat manufacturing flour mills their Rolled Oats, we have been endeavouring to keep a semblance of a conference. As far as bulk is concerned the situation is pretty well cleaned up."

(Exhibit 626)

On July 9, 1941, the Secretary issued a circular (Exhibit 36) addressed to all members setting out a dealer structure for bulk or sacked rolled oats and other products, as recommended by a special committee and stating that this was submitted to the Executive for approval. On July 15, the Secretary issued another similar circular (Exhibit 37) which recorded some changes in the prices set out in the earlier circular. Mr. Noel was questioned regarding his authority to issue such a circular:

"Q. Would you take upon yourself to issue a list of prices such as contained in exhibit No. 37?

A. Of my own volition?

Q. Yes.

A. No.

Q. And if you issued such a list, on whose instructions would it be?

A. The members of my executive." (Evidence, p. 130)

In this connection the minutes of the Executive meeting of July 15, 1941, reported in part:

"Agreed that flour, rolled oats, millfeed, coarse grains and all sundry lines shall be sold only on the basis of current list. Specifications are to be obtained with order and shipment provided within three days of its receipt." (Exhibit 26)

During the period of wartime price control, which began at the end of 1941, there were times when members of the Association sold below list prices and times when agreements on prices appear to have been largely inoperative. In his evidence (p. 506) W. P. Noble, the chairman, stated that he did not believe there was ever complete adherence at every point at any time, but he believed it would be correct to say that there was adherence at some points all the time. Evidence of adherence to the agreement may be illustrated by reference to a letter of April 20, 1944, from D. C. Robertson (Ogilvie) Vancouver, to H. Sellers, then Western Manager, Winnipeg, in which he said in part:

"For your information, rolled oat prices have been very well maintained and the mills here seem to be working well together." (Exhibit 267)

In the same letter he indicated that there was a suspicion that one of the members had cut the price to one large account. Similar evidence is available with respect to package oats. For example, on October 26, 1942, a complaint was made with respect to the Fort William territory that in several cases:

". . . Robin Hood are retailing package oats 12 x 48 ounce at \$1.95 instead of the listed price of \$2.00." (Exhibit 437)

The Secretary was asked to take steps to have the matter corrected. In reply to this complaint, W. S. Thain of Winnipeg wrote the Secretary on November 7, 1942, in part as follows:

"... a complete check of all Fort William sales has been made and we do find two sales of individual cases were made to stores October 23 last on which our price entered on the invoices by our local distributor there was \$1.95. As soon as these invoices were received in Winnipeg price was corrected and proper list charged to the customers. No doubt this information will satisfactorily answer the member inquiring." (Exhibit 437)

When price cutting developed later, efforts were made to remedy the situation, as illustrated by the following extract from the minutes of the cereal members' meeting held on May 18, 1944:

"1. **SACKED ROLLED OATS:**

Full list (Jobber and Retail) is to be maintained without exception throughout in all classifications of the trade on all sales of sacked rolled oats at all points.

(This decision founded on a discussion of conditions, for example, at Swift Current and Shaunavon which the mills decided to correct immediately by rigid application of list.)



## 2. PACKAGED ROLLED OATS:

Full list (Jobber and Retail) is to be maintained without exception throughout in all classifications of trade on all sales of package rolled oats at all points."

(Exhibit 67)

Indicative of efforts taken to ensure uniformity of prices is correspondence passing among C. R. Stacey (Quaker), Saskatoon, J. A. Humphries (Purity), Calgary and the Secretary. There was a difference of opinion between Messrs. Stacey and Humphries over the correctness of the Quaker price list of March 31, 1947. In replying to Mr. Humphries on May 13, 1947, Mr. Stacey said in part:

"We always send copies of our price lists to Mr. Noel for checking and he has not drawn to our attention the discrepancies mentioned in your letter, and I have taken the matter up with him further."

(Exhibit 437)

In referring the matter to the Secretary on the same date, Mr. Stacey concluded his letter with the following statement:

"... I do think that our prices are right, but if there are any discrepancies we would appreciate your advising and we will certainly have them corrected."

(Exhibit 437)

In his reply on May 15, 1947, Mr. Noel, after setting out the categories of the structure, including the recent price advance, indicated that the Quaker list appeared to be built on the foundation of the structure. Mr. Humphries who received a copy of this letter, replied on May 17, 1947, in part as follows:

"I think we are all pretty much in agreement with the various prices to be charged on rolled oats sales."

(Exhibit 437)

Authorizations granted to individual companies in March, 1947, permitted increases in the prices of both sacked and package rolled oats. The following references in correspondence at this time indicate the extent of the agreement among the mills on the maintenance of common selling prices. On March 26, 1947, W. P. Noble (Quaker), Saskatoon, wrote to the Secretary, in part:

"... we are ready to increase our present basis on 9/5's to the extent of 4 cents per case, making the jobber's basis \$2.14 and the dealer basis \$2.29."

.....

As advised you over the phone, we simply await your advice that all others are prepared to make this change and we will immediately do so."

(Exhibit 434)

To this Mr. Noel replied on March 28, 1947, in part:

"I reply to your letter of March 26 received this morning. At this moment all mills recognize the basis for 9/5's as Jobber \$2.14 and Dealer \$2.29."

(Exhibit 434)

In a letter of March 14, 1947, W. P. Noble (Quaker), Saskatoon, wrote to J. G. Wharry that he had spoken over the long distance telephone to H. N. Davis (Ogilvie) and went on to say:

"I also spoke long distance to Mr. Henning, Western Sales Manager for Robin Hood. He was at Vancouver. Also to Mulligan at Winnipeg and all of them, I am glad to say, were agreeable to the adjusting of the 10 cents spread that has existed between our prices and theirs; consequently, they are all going up a straight 35 cents per case on both their Non Premium and Premium package."

(Exhibit 235)

In the same connection A. W. Mulligan (Purity), Winnipeg, wrote to J. A. Humphries of Calgary office on March 14, 1947, as follows:

"I understand that all mills have agreed to this advance with the exception that the Quaker Oats Company are advancing their prices on non-premium and Tumbler packages only 25 cents per case, thus levelling out the difference of 10 cents per case which has been in effect for some time. All the other mills have agreed to this arrangement, and we have undertaken to increase our price 35 cents per case, with no bookings."

Will you please see that your salesmen and jobbers are notified accordingly."

(Exhibit 256)

While it was contended by the representative of one mill that there was no agreement to eliminate the price differential but that it was simply a decision made by Quaker alone and by another that the differential had been corrected years ago, it is quite clear from the above correspondence that the differential was eliminated by agreement.

### 3. Coarse Grains

As in Eastern Canada, sales of coarse grains are made by milling companies as a subsidiary feature of their distribution activities, particularly in areas where supplies are not readily available from other sources.

Examination of the documentary evidence discloses references to discussions among Association members from time to time with respect to common prices for these commodities. While price agreements pertaining to the sale of coarse grains in particular areas were entered into at certain times, the available evidence does not indicate to what extent such agreements were effective or whether a price structure was worked out to be applied generally in Western Canada.

## VII. OFFICIAL RECORDS OF PRICE AGREEMENTS AND DISCUSSIONS

The methods used by the C.N.M.A. in the East and by the Western Division in recording agreements and discussions regarding prices and other related matters have been so unusual as to deserve separate comment.

Minutes of meetings of both organizations were prepared by the respective secretaries. In the East, however, the official minutes of the Executive Committee contained little or no reference to discussions and decisions regarding such matters as are reviewed in this report. These discussions and decisions were recorded in another series of confidential documents. The minutes of the Western Division contain a relatively full account of such discussions and decisions, but the Secretary destroyed his set of copies immediately prior to the opening of this investigation.

The significance of the action taken in both instances is apparent from the following factual statement.

### 1. Eastern Canada

Following meetings of the Executive Committee of the C.N.M.A. it was the practice of the Secretary to prepare minutes which were entered in the minute book and which usually were signed by both the Chairman and the Secretary. At each meeting the minutes of the previous meeting were read or taken as read. At the beginning of the inquiry the Secretary produced the minute book without hesitation. The first meeting reported was held on September 13, 1927, the last on June 26, 1947. Subsequently unsigned minutes were furnished for meetings held on December 18, 1947. The minutes for the period under review (1936 to 1947) were found on examination to contain no record of decisions respecting prices or price agreements, and little or no reference to other matters which were the subject of this investigation.

Later in the inquiry, when the records of individual companies were examined, mimeographed copies were found of certain "confidential memoranda", sometimes designated "for Executive representatives only." The first of these memoranda was dated February 20, 1936, the last July 26, 1947. They were prepared by the Secretary and circulated privately to the members of the Executive. Of the ninety-nine memoranda issued the Secretary had not a single copy in his possession. A full set was not obtained from any one company's records, but from several sources a fairly complete file was made up. Both memoranda and minutes record proceedings of the same meetings, including discussions and decisions on a great variety of subjects. The memoranda frequently repeat or paraphrase items recorded in the minutes.

In one important respect, however, the two records are different. The memoranda include numerous references to understandings or agreements on prices, competitive conditions and related matters in the domestic market, whereas the minutes are devoid of any such references except, occasionally, in the most general terms, and except for specific references to such matters as premiums. The significance of these omissions from the official minutes is apparent from the following extracts, shown in parallel columns, from the two records of the same meetings:

#### MEETING OF JULY 13, 1938

##### *Memorandum No. 28*

##### *"Report of Sales Managers:*

The Secretary reported that two of the members were exacting only 40 cents per barrel for Top Patent over the basic grade, instead of 50 cents, in the Province of Quebec.

It was unanimously agreed to maintain the 50 cents differential throughout Eastern Canada.

##### *Minutes*

No reference.



The following minimum prices were established—mills pledging themselves to adhere rigidly thereto:

Quebec .....	\$5.75	per barrel 98's jute, Second Patent, net cash track.
Ontario.....	\$5.65	do do
Maritime Provinces.....	\$6.75	per barrel 98's cotton, Top Patent, net cash track.

In connection with the Maritime Provinces, the secretary was instructed to circularize the members, calling attention to the fact that the \$6.75 price is applicable only to large jobbers, as well as bakers in Halifax, St. John and Dartmouth; smaller jobbers to be sold at the spreads indicated in the Maritime Jobbers' list. The price to Dealers to be \$7.00 net." (Exhibit 577)

#### MEETING OF DECEMBER 14, 1938

##### Memorandum No. 33

##### "Small Mill Competition in Western Canada

One of the members reported on the discussion which took place in Winnipeg, December 9, at which time it was thought that whatever line of action was deemed necessary should be confined to those areas in which small mills are particularly active, and the suggestions then offered were the making of a special price in those areas and, if necessary, the introduction of a special brand. The question to receive the further consideration of Western Managers in meeting early in the new year. The two members engaged in the sale of flour in Western Canada and not represented at the meeting were requested to communicate with their Western Managers.

##### Prices

It was agreed by all members that no flour would be sold below 20 cents per barrel under prevailing list prices. Instructions to that effect were telegraphed to all offices over the signatures of the Various Executive representatives." (Exhibit 472)

##### Minutes

##### "Conditions in Western Canada

It was reported that a meeting would be held in the new year at which Western Sales Managers would be present."

(Exhibit 629)

#### MEETING OF FEBRUARY 8, 1939

##### Memorandum No. 35

##### "Quotations to Department of Justice

It was understood that future quotations to this class of trade would be on an 'Open' basis."<sup>1</sup> (Exhibit 450)

##### Minutes

No reference.

#### MEETING OF JANUARY 18, 1940

##### Memorandum No. 44

##### "Domestic

It was moved, seconded and unanimously agreed that present list prices would remain unchanged but that a discretionary shade of not more than 30c per barrel under list prices is permissible on sales to all classes of trade in Ontario, Quebec and the Maritime Provinces, which shall constitute the lowest selling levels.

Any reported violations of price, etc. are to be investigated by the secretary. It was distinctly understood that should any complaining mill, upon being informed following investigation that a member had been guilty of an infringement, refuse to maintain prices, immediate notification to that effect is to be given the secretary and by the secretary to all members." (Exhibit 577)

##### Minutes

No reference.

#### MEETING OF FEBRUARY 13, 1940

##### Memorandum No. 45

##### "Domestic

A review of conditions within the domestic market revealed a much happier state of affairs since the meeting of January 18. The secretary reported having investigated a number of reported violations which had come to his attention, none of which had indicated that the members concerned had not lived up to the assurances given at the last meeting." (Exhibit 577)

##### Minutes

No reference.

<sup>1</sup> Quotations to the Department of Justice were sometimes on an "open" or competitive basis, sometimes on an agreed price basis. Memorandum No. 41, October 8, 1939, records agreement on a specific price for this business.

## MEETING OF SEPTEMBER 10, 1940

*Memorandum No. 51**"Domestic"**Minutes*  
No reference.

It was further understood and agreed that no mills, apart from Robin Hood and Quaker, would either quote or sell the following bakery accounts in Ontario: [Ten bakeries listed].

It was further understood and agreed that the following shall be sold on an 'open' basis: [Four bakeries listed].

In return for the above it is understood that Maple Leaf will turn over to Robin Hood and Quaker their Canadian Bakery business at Moose Jaw, Saskatoon and Battleford—the arrangement which existed between December, 1934, and up to 1939. Furthermore, that Ogilvie and all other members of the Association agree not to sell Weston's at Moose Jaw, Regina, Saskatoon and Calgary.

Also in return for the above it is understood that Robin Hood and Quaker shall not quote to Canada Bread, Consolidated, Purity Bakery, Eastern Bakeries in Nova Scotia, McGavin Bakeries and Canadian Bakeries.

The above arrangement to remain in effect until the December meeting when it is understood that the list named on Page 3 will be revised in the light of experience developed between now and then."  
(Exhibit 572)

## MEETING OF DECEMBER 6, 1940

*Memorandum No. 54**"Domestic:"**Minutes*  
No reference.

Following a lengthy discussion on conditions within the domestic market, it was decided to establish prices on an all-rail basis by advancing prices in Ontario (with the exception of Northern Ontario and Abitibi District) and the Maritimes 10 cents per barrel, and a similar advance applicable only on the price of flour in cotton in the Province of Quebec."  
(Exhibit 577)

## MEETING OF AUGUST 14, 1941

*Memorandum No. 62**"Domestic:"**Minutes*  
No reference.

A lengthy discussion ensued with respect to conditions within the domestic market, following which it was understood and agreed by all that a minimum basis would be maintained on the basis of 20 cents per barrel below existing list prices, i.e., prices shown on lists dated July 31.

In that respect, however, a reservation was agreed to insofar as Messrs. Quaker and McDonald & Robb are concerned. During the discussion it was intimated that perhaps flour had been sold at more than 20 cents under prices shown on lists dated July 31, and by virtue of such intimation the two mills mentioned reserve the right to determine the extent of the competition to which their own customers are subjected, on the understanding that they would not sell any flour below the agreed upon minimum without first discussing the matter with the mill or mills who had booked flour in the territory."  
(Exhibit 479)

## MEETING OF MAY 18, 1943

*Memorandum No. 76**"Ships' Stores"**Minutes*  
*"Ships' Stores"*

The secretary reported that the Administrator for Ships' Stores, in conjunction with the Wheat Board, had placed the sale of flour for ships' stores under the price ceiling legislation.

Discussion ensued with respect to recent notification to mills that the price of flour in respect of ships' stores business, or at least in respect of quotations to the Department of Munitions and Supply had been decontrolled. Finally it was agreed that in connection with the Department of Munitions and Supply, quotations insofar as Halifax is concerned shall be made on behalf of all members by Mr. A. G. Watson, and by Mr. J. P. Whitney insofar as St. John is concerned—the orders so received to be distributed in turn to each of the members by Mr. Watson and/or Mr. Whitney in a manner to be determined by them.

Insofar as ships' stores are concerned, i.e., purchases by Steamship Companies direct, whether in Halifax, St. John, Montreal, etc., it was understood that the ceiling price named by the Association shall apply."  
(Exhibit 481)

The secretary reported that the Administrator of Ships' Stores, in conjunction with the Wheat Board, had placed the sale of flour for Ships' Stores under the price ceiling legislation."  
(Exhibit 630)

## MEETING OF DECEMBER 6, 1944

## Memorandum No. 86

"Open" Accounts:

Minutes  
No reference.

A list of thirteen accounts in Ontario was agreed upon, in respect of which it was definitely understood that the minimum price would be \$4.10 per barrel (in 98's cotton) or \$3.90 (in 98's paper) net cash, delivered in; that any enquiries from those accounts would first be submitted to Head Office; that there would be no booking of orders, but that sales would be made for shipment within thirty days. Other bakery accounts to be \$4.20 per barrel net cash track, 98's cotton, in the lake-and-rail area.

It was further understood that the Chairman of the Ontario Sales Managers' Committee would be requested to summon an early meeting of the Ontario Group, including Messrs. Dunsford and Campbell, to discuss conditions within Ontario." (Exhibit 577)

## MEETING OF MARCH 21, 1947

## Memorandum No. 98

"Domestic"

Minutes  
"Domestic"

[Under this heading are four paragraphs dealing with a proposed supplementary application to the Flour Administrator requesting some relief from price ceilings and agreement to present the Association's views on taxation to the administrator, followed by:]

"It was further agreed that the sales managers for Ontario, Quebec and the Maritime Provinces would be assembled in meeting, separately, for the purpose of arriving at proper selling structures in preparation for de-control; the combined views to be considered by the General Sales Managers in meeting.

In the absence of the member involved, progress was reported in the matter of private brands." (Exhibit 487)

[Under this heading the minutes contain the first four paragraphs referred to opposite. The two paragraphs quoted from the memorandum do not appear in the minutes.]

(Exhibit 630)

No satisfactory explanation was obtained from the Secretary as to the omission from the official minute book of any reference to such matters as domestic price agreements. Several reasons were given in a fairly lengthy discussion which was to some extent summed up in the following question addressed to the Secretary. His reply is typical of the answers received:

"Q. You see, what we are trying to get is some convincing statement from you as to the test that you applied in your decisions as to whether you would include them in the items of the minutes or not. At one point you say that you do not include them because you do not consider them important. But as to some of the items we have found here, we, in our ignorance, would think them pretty important decisions to make. And at another point you said: No decision was reached; but we find that there were included in the minutes many items on which there had been no decision, but just a report of what was discussed. Again you say there was no agreement, in spite of the fact that the memorandum reported unanimous agreement. Again you say there was no directive, yet we find that in some cases, where they relate to prices, directives have been issued, yet no reference is made to them in the minutes. So can you give us some satisfying explanation as to what principles you applied, or what tests you used in determining whether you include them in the minutes or not? It looks to me now, from the evidence we have heard, that any reference to prices is omitted from the minutes. Can you disabuse my mind of that opinion?

A. There never was any unanimity of opinion in the matter of prices; and there never was an expression of opinion on the part of all concerned. I had to judge for myself which was and which was not correct; and I might have to read the minds of some people. But I do not know."

(Evidence, pp. 3138-9)

In his evidence Mr. C. H. G. Short, president of the Association, expressed surprise at this discrepancy between the two records. His evidence, in part, was as follows:

"Q. Could you tell us why none of the references to prices or understandings or pledges mentioned in those memoranda are not in the original minute book, none of them?

A. I cannot. Is that a fact?

Q. Yes. Any reference in the memoranda to flour prices, mill feed prices, price structure—not one of them is in the original minute book, and we have had the original minute book and the memoranda here to be submitted.

A. Well!



Q. Could you tell us then why no reference is found in the minute book to any of the items in the memoranda which refer to prices or understandings or so forth?

A. No, I cannot, I cannot! It is strange, because there has been no attempt to hide; these files were taken out of my office; what is the difference; these are supposed to be accounts of what happened at the meetings.

Q. Yes?

A. The only answer I can give you is that there was never any formal resolution, or I suppose that such and such is *et cetera*, *et cetera*, but simply talk and general agreement as such as a yardstick of values. There is no motion at any time. I cannot think of why it should not be in the minutes; it might just as well be in the minutes as another—there is not the least difference.” (Evidence, pp. 2710-11).

There can be no reasonable doubt that these decisions as reported in the memoranda but not in the minutes were considered of importance to the industry and that they were in fact actual decisions or agreements. Agreements and discussions on many matters of considerably less importance were recorded in the official minute book.

Whatever the real reasons were for the course taken, it is clear that the Association had in effect a double set of minutes. One of them, official and signed, gives little or no indication that the members reached agreement, or even discussed agreement regarding domestic prices and related matters. The other, which was apparently regarded as even more confidential than the minutes, discloses the details of many such agreements which were obviously designed to lessen price competition in the sale of flour and other related products.

## 2. Western Canada

The Secretary of the Western Division stated in his evidence that he kept no minute book but that following each meeting it had been his practice to prepare minutes in mimeograph form and distribute them to members of the Executive. The minutes of each meeting were not signed but at the subsequent meeting invariably were read or taken as read.

In the preliminary stages of the investigation in Winnipeg, in September, 1947, the Secretary informed the investigating officer that no minute book was kept and that the only minutes available were mimeographed copies of minutes of the last Executive meeting, held on April 10, 1947, and of the last meeting of Cereal Members, held on March 22, 1945.

During the hearings held later in Winnipeg, the Secretary and members of the Executive were questioned in this regard, as it seemed extraordinary that minutes of Executive meetings were not retained by the Secretary. In his evidence the Secretary stated that he believed copies of minutes from 1936 to 1947 had been kept in his office until August or September, 1947, when they had been destroyed. While he could not recall the exact dates on which this destruction had taken place, he believed that it had been carried out over a period of a week. When asked if they had been destroyed before September 15, his impression was that they had.<sup>1</sup> The destruction of records was carried out personally by him with the assistance of his secretary. When asked the reason for this destruction, Mr. Noel explained that filing space in the office was becoming limited and, realizing that he would have to move soon owing to the sale of the office building, he decided to tidy up and dispose of numerous records and correspondence which he considered dead. He claimed that when the destruction took place he did not have in mind the possibility of an investigation under the Combines Investigation Act. Mr. Noel stated that there had been no discussion with members of the Executive prior to the destruction of records, but that he had reported it to some members in conversations subsequent to the institution of the investigation.

<sup>1</sup> Newspaper reports about the flour milling inquiry did not appear until September 17, but investigation into the related bread-baking industry, in which several flour milling companies are actively interested, was started early in August.

W. P. Noble, the Chairman, E. B. Frost, W. J. Henning and A. W. Mulligan all stated that they had never been advised or consulted concerning the destruction of the minutes and had no previous knowledge of it. L. A. Eagleton recalled that Mr. Noel had mentioned in a telephone conversation the matter of destroying files or minutes.

In the office of no member was there found a complete set of the minutes. One company produced a partial set; others were able to produce only a few scattered copies, and some could produce none. A fairly complete set of the minutes was finally pieced together, many of the documents being obtained from the records of the head offices in the East.

Reference should also be made to a practice, followed by some of the member companies in the West of using plain paper, instead of the companies' letterheads, in writing to the Secretary about price agreements and related matters.

On being questioned as to whether this had any significance the Secretary stated that to his knowledge it did not, nor had it ever been discussed at meetings or with any of the members. Pointed reference to the practice was made in the following extract from a letter written by W. P. Noble, Quaker General Manager for Western Canada, to J. G. Wharry, Vice-President, on July 9, 1947:

"Thanks for your confidential letter of July 5, which I have destroyed, as requested. We try to be careful at all times in correspondence re Millers' Association matters. We keep a separate file for correspondence with Mr. D. P. Noel and we always write him on plain paper, confidential. In so far as correspondence with our salesmen is concerned, we try to keep away entirely from any mention of Millers' Association." (Exhibit 239)

Questioned regarding the practice of destroying letters, Mr. Noble testified that he had no recollection of the contents of the confidential letter of July 5 but added that it was evident from his own letter that it must have dealt with matters of the Association and decontrol. When asked for "the reason for all this secrecy", Mr. Noble replied:

"A. Because we do not want our salesmen to know anything about the millers' association. It is not their business. So far as our salesmen are concerned they are working for our company and take their instructions from us.

Q. Is that the only reason?

A. Well, that is essentially the reason, because we want them to understand that their prices and everything are dictated from our own office.

Q. Is it possible that the confidential letter of July 5 referred to the activities of the association being illegal, and to be careful?

A. I doubt that; I certainly do not remember any such reference.

Q. Why always write Mr. Noel on plain paper?

A. Confidential.

Q. Plain paper, why?

A. For the reason that we wanted it confidential.

Q. That is, you are minimizing as much as possible the possibility of your letter's being identified by the letterhead. So you write him on plain paper, is that right?

A. That is right."

(Evidence, pp. 555-6)

J. G. Wharry dealt with the necessity for secrecy in a circular of June 18, 1947 addressed to Quaker Division Managers:

"I had occasion to write one of the Division Managers this morning about an advice which he addressed to the salesmen in his division. The letter referred to two subjects about which I have commented directly to the Division Manager but I do think the comments would be of value to all you men.

The letter referred to an agreement with the Millers' Association and it further referred to some of our competitors not insisting on certain quantities of 80's 20's and 9/5's rolled oats to get the minimum price or the wholesale price. In writing to our men, I don't think we should ever refer to agreements or associations because in this day and age there is altogether too much talk about combines, cartels and big business not doing the right thing. If we pass this on to our men, they in turn discuss it with the wholesaler and retailer and they, for want of something else to talk about, discuss it with other people so that aspect of business gets too much publicity."

(Exhibit 238)



## VIII. MEMBERS' INTERPRETATION AND OBSERVANCE OF AGREEMENTS

### 1. Members' Interpretation of "Agreement"

The review of the activities of C.N.M.A. and of its Western Division, which is contained in the preceding sections, has been based largely upon the documentary evidence which was obtained from the member firms. This documentary evidence discloses fully the details of the price arrangements and other related matters which were discussed and accepted by representatives of the Association members.

The word "agreement" and its equivalents, which appear repeatedly in the minutes and correspondence, were subject to various interpretations by the Association secretaries and representatives of the member companies in their oral evidence. It was contended strongly by some that no agreement in fact existed; others testified that agreements had been entered into but that there were mental or open reservations by participants which made the agreements of no effect; still others, while admitting agreements had been entered into, stated that there was little confidence among the members and that the agreements were really inoperative because members so often failed to observe them. One witness described the evidence of agreement contained in the minutes as high-sounding resolutions and said that "in the backs of our minds we were never bound by any agreement". He also said that at some of the meetings he had mentioned that his company felt itself free at all times to meet competitive conditions. Similar testimony was given by another witness who claimed that everything was done with a reservation, or, to use his own words, "everybody had his tongue in his cheek when these things were discussed".

Other explanations were offered: that the discussions related to costs, not prices; that some members never intended to agree, but for their own advantage sought to mislead the others into thinking they had agreed; that the agreements related simply to a "fair yardstick of values"; that the price established was not mandatory and each member was free to meet competition within or without the Association; that incorrect terminology had been used and the word "agreement" was a misnomer, the prices referred to in the so-called agreements being merely indicative of value based on cost to provide a reasonable return; that the representatives agreed merely that certain prices were fair and reasonable, without any understanding to adhere to them. Witnesses contended also that, even on those occasions when a pledge of honour was reported to have been given that prices would be maintained, it was understood by the members that they would be free to meet competition and that, no matter what the minutes contained, the industry was most competitive, with "everybody for himself".

These various interpretations must be considered in the light of other very definite statements that agreements on price and other related matters were made; that they were put into effect; that measures were taken to ensure their observance; and that frequently, where agreement was not reached at meetings, this fact was recorded. Some of these statements were contained in the memoranda of Executive meetings of the C.N.M.A. (though not in the official minutes), others in the minutes of the Western Division, the correspondence of the members and officers of the Association, as well as in the oral evidence of several witnesses.



The memoranda of the Executive meetings of the C.N.M.A. are replete with references to such agreements, usually introduced by such phrases as "it was understood and agreed", "all were unanimous in agreeing", "moved, seconded and unanimously agreed", "definitely understood". The Secretary sought to explain this away by saying that this was merely his own phraseology and that there never was any unanimity in the matter of prices; that there was a suggested price but never any definite price agreed upon or established. These memoranda, however, have been circulated to the members for years and they contain no reference to any question having been raised about the fact of agreement or the appropriateness of the phraseology. On several occasions when agreement was not reached, this fact is recorded by such phrases as "nothing definite was decided upon", "nothing definite was agreed upon", "with one exception there was agreement", "not unanimity of opinion".

Representatives of the Ogilvie company testified they had stated time and again, in meetings of the C.N.M.A. in the east, that the company was retaining complete freedom of action to meet competition wherever it was found, that this reservation did not involve waiting until another member company had cut the price, but that Ogilvie was free to accept business at prices offered by buyers if it so desired. A representative of another company thought he could remember a representative of Ogilvie having stated at meetings that a particular price seemed reasonable but that Ogilvie was not bound by it and would meet competition as it was found.

Careful examination has been made of available memoranda of Executive meetings and on only one occasion is Ogilvie referred to by name as making any reservation with respect to a price agreement. This reservation is reported in Memorandum No. 3 of Executive meeting of April 14, 1936, as follows:

"It was understood that the discretion of 10c. per barrel in the Maritime Provinces, heretofore enjoyed by Messrs. Ogilvies, would be removed. Messrs. Ogilvies gave the above assurance on the understanding that their position in respect to small mill competition is quite clear, i.e., that they were not concerned here or there about the odd car of flour, but that they would take whatever steps were necessary to hold their old and established connections against the competition of small mills. (Exhibit 577)

In the Association records the only other instances which have been found of reservations with respect to price agreements by unnamed or named companies are reported in Memoranda No. 24 and No. 62 of Executive meetings of March 9, 1938, and August 14, 1941, respectively, as follows:

"... In so far as the Ontario minimum is concerned, one mill placed itself on record that if the minimum is observed by all other mills they will adhere to it, but reserve the right to quote a lesser price if satisfied that other mills are doing likewise." (Exhibit 577)

"A lengthy discussion ensued with respect to conditions within the domestic market, following which it was understood and agreed by all that a minimum basis would be maintained on the basis of 20c. per barrel below existing list prices, i.e., prices shown on lists dated July 31.

In that respect, however, a reservation was agreed to in so far as Messrs. Quaker and McDonald & Robb are concerned. During the discussion, it was intimated that perhaps flour had been sold at more than 20c. under prices shown on lists dated July 31, and by virtue of such intimation the two mills mentioned reserve the right to determine the extent of the competition to which their own customers are subjected, on the understanding that they would not sell any flour below the agreed upon minimum without first discussing the matter with the mill or mills who had booked flour in the territory." (Exhibit 479)

A reference to the Ogilvie reservation is also contained in a letter of February 12, 1942, from R. E. Cutting (Quaker), Peterborough, to H. Groom (Ogilvie), Montreal:

"I have just received information on what I consider mighty good authority to the effect you have been quoting rolled oats in Cornwall and the Cornwall district at

\$3.15 and so have Robin Hood and, to make the matter still worse, I understand Western Canada sold down there at \$3.10.

I think I will revert to Mr. Morris' definition of his attitude on conditions of this kind. We reserve the right to meet competitive conditions as we find them."

(Exhibit 594)

Questioned with regard to this letter, Mr. Groom said:

"A. That is his understanding, apparently, of the reservation which Mr. Morris made.

Q. Do you think that is Mr. Morris' understanding of the reservation?

A. I think that Mr. Morris' understanding was that—rather further than that—that he maintained freedom of action in so far as our business was concerned.

Q. If he found competitive conditions?

A. No, I think, without tying it up to competitive conditions, he refused to be bound by any of these price structures or price lists, or whatever you care to call them."

(Evidence, p. 2293)

It is difficult to understand why the reservation as expressed by Ogilvie representatives in their oral evidence was not reported in the minutes or memoranda of the Association or why some protest was not made at its omission and a correction made. Quite clearly the effect of such a reservation is that Ogilvie would not be a party to the various agreements. If this were the case it would not be expected that any other member of the Association would have the right or would bother to make complaints of price cutting against Ogilvie. There is, however, evidence of such complaints being made and nothing to indicate that they were treated other than seriously by Ogilvie representatives.

The absence of reference to any such reservation in Association records is rendered more significant by the manner in which the commitments were reported upon by other members. With the one exception already referred to, and which is far from positive, there is no indication that such a reservation was so understood by the other members of the Association. Any of the reservations made as illustrated by the documentary evidence obviously were not such as to place the company making the reservation outside the agreements. Such reservations as were made appear, for the most part, to have been simply a *quid pro quo*, as expressed by C. E. Soward (Maple Leaf), Toronto, in his letter of November 2, 1938, to the Secretary:

"You ask for the unqualified assurance that we will observe prices, regulations, etc., in the Maritime Provinces. Our company is prepared to give you positive assurance to this effect but, like other mills, I am afraid we must make one qualification. That qualification is that we will strictly observe the prices and regulations until such time as we have proof that other mills are not doing so. Past experience tells us that we cannot wait to verify such proof and to hold a 'court of inquiry' so to speak. When this is done invariably the 'horse is stolen'. Of course, it goes without saying that our company is so anxious to maintain a respectable price level that we will not deviate from the established price level and regulations the first time a salesman or divisional sales manager tells us of some small infraction. We would see to it that there was sufficient evidence of some mill or mills having committed a serious infraction of the regulations before doing so ourselves.

I imagine that other mills will give you similar qualifications in any written assurance that they may furnish, but if there is a desire for a more definite undertaking I will glad to consider the matter again."

(Exhibit 489)

The minutes of the Western Division of the C.N.M.A. refer to the agreements on price and subsidiary matters in much the same language as is used in the C.N.M.A. memoranda. The variations run all the way from the simple statement "It was agreed" to the more formal pledge "All members pledged their honour that they will not make sales of flour at less than list". The interpretations of "agreement" given by the western representatives were similar to those given by their eastern counterparts.

The Western Division minutes recorded instances where members did not agree or where there was no unanimity. At each meeting the minutes of the



previous meeting were read, or taken as read, at which time the members had opportunity to make corrections. There is at least one occasion when the minutes were amended at a subsequent meeting as the result of a protest by one of the members. In his evidence the Secretary said that where the minutes stated that all had agreed to maintain list he did not think anyone had dissented, and while there might have been one or two occasions where a member subsequently protested that he had not agreed, he could not recall the specific occasions. In any event he was quite positive that this had not occurred in recent times. He also said that in dealing with price complaints he always treated them seriously and had never disposed of any by pointing out that one member had refused to be bound by the agreement; he always proceeded on the basis that the understanding was in force for all members, it being the foundation upon which he fulfilled his responsibilities.

It is clear from both the eastern and western evidence that at times the representatives lacked confidence in each other and doubted that the agreements would be adhered to. Considerable suspicion appears to have been directed towards one particular company and the feeling was freely expressed that this company was always the first to break price arrangements. In spite of this the representatives have continued for many years to meet from time to time and make new price agreements or vary or reaffirm existing ones.

During periods when one or more of the members would not enter into an agreement prices would be considered, to all intents and purposes, as "open". At one time, when one company refused to enter into agreement, the others did agree on a minimum price with a proviso that the minimum could be departed from in meeting prices quoted by the non-agreeing company, with a record being kept of such departures. Following these periods of incomplete agreement or absence of agreement, new agreements were entered into by the members.

Finally the well-established procedures which have been set up for the receipt, investigation and disposal of price complaints provide the most convincing proof that the documentary evidence of agreement may be taken at its face value. The next section of this chapter is devoted to the description and appraisal of these procedures.

It was contended by some, as already mentioned, that, while there might have been agreements upon price, they were largely ineffective owing to price cutting, well over fifty per cent of their business being below the Association prices. Another contended that it would be considered fortunate if the structure or list were maintained fifty per cent of the time. Others stated that there were periods when more sales were made below than at their list prices, and cited this as evidence of absence of agreement. The oral and documentary evidence clearly indicates that there was not complete observance of the price agreements in all places at all times. From time to time price cutting would break out in certain areas and threaten to spread to other areas. Efforts would be made to adjust the situation by meetings or correspondence and frequently the Secretary issued a circular requesting written assurance from the members that prices would be adhered to. In some instances the structure was revised and a new agreement entered into.

With respect to price cutting there has been a tendency to exaggerate the effect of individual cases on the general structure. This is illustrated by the following extracts from a letter written by the C.N.M.A. Secretary, on November 23, 1940, to representatives of three eastern mills:

"Mr. . . . telephoned this morning to the effect that there is quite a lot of price-cutting in the domestic market and asked me to pass his views to the Chairman that a meeting of the Executive should be held next week—in Toronto or Montreal. I informed him that a meeting is scheduled to take place in Toronto on December 6, but he prefers the meeting next week 'as we will have to break loose because we are not going to have our customers taken away from us'.



Mr. . . . said I was correct in assuming that his request for a meeting next week was as the result of yesterday's discussions. I then informed him that only one report of a cut had been brought before the meeting, which had been denied, and that the matter was not brought out into the open because his representative refused to do so.

Apart from a few isolated cases with respect to quotations and/or sales in Ontario and Quebec, which is not unusual during the life of a conference and particularly following an 'open' period and during a quiet period, I would say that reports reaching this office are nothing to worry about. Therefore, I should think that Mr. . . . could clear the air by contacting the general manager of the mill accused of cutting the price by predating a contract." (Exhibit 460)

A further illustration is found in the following extract from the correspondence, written on July 27, 1939:

" . . . We know there's no real, true sincerity in a price agreement; there never will be as long as the . . . Co. is able to merchandise its goods easier than the other fellow. I never regard a price agreement effected with these birds as being something in the nature of the Ten Commandments. I know the poor devils cannot keep to a price agreement, if they wanted to, but I do want an agreement so that we can get a nominal price—as high as we can have it—because if they only subscribe, say, 60 or 70 per cent to a price, we are . . . better off at, say, level X for the amount of business we do, than if we do it at X minus 30 cents per bbl. and whatever X may be, our fellows are going to be selling at something below that X level—so it is always in our interest to keep the X level as high as we can, so that we can get as much business as we can at the high X and are not too . . . badly hurt when we have to take business at 'X minus' to offset subversive conditions, as and when they become intolerable." (Exhibit 699)

One witness, in contending that there was no agreement on the part of his company, stated that if his company could tie the other members down to believing that they had an agreement and thereby lull them into a false sense of security it was then placed in a better position to do business. From examination of the correspondence there is no doubt that at times representatives of other companies suspected this to be so.

The fact that the members had doubts as to the motives of this company as early as 1938 and continued to enter into agreements involving its participation indicates clearly in itself that it was expected that such arrangements would result in sufficient adherence to the terms to warrant their adoption. An expression of this attitude, written in May, 1945, is found in the following extract from the correspondence:

" . . . True, there is always a certain amount of price-cutting. No agreement has ever worked one hundred per cent but by working seventy-five per cent it means a lot of extra dollars in the treasury." (Exhibit 228)

## 2. Complaints of Non-observance of Agreements

In an effort to obtain adherence to the agreements already described, a system of dealing with complaints was set up in the C.N.M.A. and the Western Division. The general practice was for the complaining member to notify the Secretary, giving particulars of the complaint and he in turn, without disclosing the name of the complainant, would submit the complaint by letter, telegram or telephone call to the member or members complained against. Often, in submitting a complaint, the Secretary would request an assurance from the member or members complained against that the agreed price basis be adhered to. Generally, a reply would be made by the member complained against either denying the complaint or submitting an explanation. In some cases complaints were made directly by one member to another. The Western Division Secretary would often transmit to the complaining member the denial or admission and explanation which had been received as a result of his investigation.

(1) ONTARIO, QUEBEC AND MARITIME PROVINCES. With some variations, this system of complaints appears to have existed throughout the period 1936-

1947. Examination of the documentary evidence discloses references to it in reports of the early meetings and examples of price complaints in practically every year. For instance, in a circular letter from the Secretary addressed to Quebec Sales Managers on October 22, 1936, and containing a summary of the discussions at the Quebec Sales Managers' meeting of that date, the following is reported:

"It was stated that recently there had been price-cutting on the part of some mills, and it was recommended that such breaches should be reported to the secretary. However, inasmuch as there appeared to be reluctance on the part of members to report such violations for the reason that, as a rule, buyers are informed as to what has taken place, it was recommended that the Executive adopt some measures to avoid such repercussions." (Exhibit 655)

At the next Executive meeting on November 12, 1936, the following decision, as reported in Memorandum No. 10, was reached:

"All complaints to be filed with the secretary. Executives to instruct their Sales Managers that when complaints are registered they will not divulge information to travellers or to anybody else." (Exhibit 648)

Again, in a letter of May 16, 1947, from a Maritime office of one of the member companies to the Secretary, the following complaint was made:

"At one of our meetings in Moncton which you attended, you will perhaps recall that it was agreed that any secret rebates that were being paid on Spring Wheat Flour sales, would be discontinued.

I have very reliable information that Lake of the Woods Milling Company and Quaker Oats Company either did not keep this arrangement, or, have reinstated it in respect to their sales to Church Point Produce Company, Church Point, N.S., and suggest you investigate, without, of course, divulging the source of your information." (Exhibit 495)

The system of complaints on price and related matters is in itself an inferential but clear indication of agreement, for otherwise it is difficult to understand upon what basis one member could complain against another. The further fact that these complaints were to all intents and purposes treated seriously enough to warrant a reply without protest by members complained against also supports this conclusion.

Although no direct sanctions were provided for breaches of the agreement, there was the indirect sanction that in such circumstances others might reduce prices, as is illustrated by the following extract from Memorandum No. 44 of Executive meeting of January 18, 1940:

"Any reported violations of price, etc., are to be investigated by the secretary. It was distinctly understood that should any complaining mill, upon being informed following investigation that a member had been guilty of an infringement, refuse to maintain prices, immediate notification to that effect is to be given the secretary and by the secretary to all members." (Exhibit 577)

(2) WESTERN CANADA. Although the system of investigating complaints appears to have been in effect from the formation of the Western Division in 1936, the first reference in the available minutes is found in the minutes of the Executive meeting of July 31-August 1, 1939, when the Secretary's powers were extended as follows:

"Vested authority in the Secretary with freedom to initiate and conduct his own investigation among the membership to satisfy himself that allowances and rebates of any kind are not being given, and that sales, according to the category, are being made on the proper basis." (Exhibit 11)

After this extract had been cited, Mr. Noel in his oral examination was asked:

"Q. The 'proper basis' there, means the basis established by the association?"

A. The basis agreed upon by the members, yes. May I make this observation, that it is something which I did not exercise.

Q. You did nothing at all to investigate—

A. Of my own volition, as indicated there.

Q. Did you investigate upon complaints made to you?

A. Yes, exactly.

Q. You did that?

A. Yes.

Q. And did you follow up your investigation by appeals to the persons concerned to comply?

A. In general complaints were made to me by correspondence or telegraph, as the case may be, and I passed on the contents of the letters which I had received, and—

Q. But did you make efforts to get these people concerned, who were charged with having violated the agreement, to comply with the regulations or with the agreement?

A. Yes, I think so, yes."

(Evidence, pp.79-80)

The importance of this agreement is illustrated by reference to a letter of August 1, 1939, from G. H. Booth (Lake of the Woods), Winnipeg, to C. H. G. Short, Montreal, reporting on what had occurred at this meeting, wherein he said:

"One of the most important arrangements adopted was that of vesting in the Secretary full authority to investigate Office records by a personal check in respect to any and all infractions which are reported to him from time to time; in fact, he was given power to investigate any matter at his own instigation. All Members unanimously agreed that this was the only plan to adopt to ensure the successful carrying out of the Regulations, and although this is a very unusual step to take it was the only thing to do under the circumstances."

(Exhibit 699)

The importance of the system is indicated in a letter of April 23, 1947, from W. P. Noble (Quaker), Saskatoon, to H. Preston of the Winnipeg office in which he said:

"This matter of meeting competitive prices was thoroughly discussed at the millers meeting in Winnipeg a couple of weeks ago and it was the unanimous opinion that instead of meeting a cut price that the matter should be taken up with the Secretary and have the situation cleared up. As long as everybody continues to meet everything that pops up, we never will get prices straightened out; therefore, I think before you take another order from this particular account at a cut price you should report the matter to Mr. Noel who in turn should get Maple Leaf straightened out and then both of you quote the proper list price."

(Exhibit 176)

Throughout the period 1936-1947 complaints of breaches of the various agreements were made to the Secretary and some examples have been cited in earlier sections. There are literally hundreds of documents of a similar nature in the documentary evidence which illustrate that breaches of price agreements have been regarded seriously by the members. The practice of making complaint is an indirect but clear indication of agreement upon price and related matters as in the absence of an agreement there would be no ground for complaining that prices were not being observed. While the volume of complaints is no doubt indicative of incomplete adherence to these agreements at particular times in various areas, it also indicates the attention which each member gave to the maintenance of prices by others, and, as well, their expectation that agreements would be followed, as otherwise there would be no point in seeking action by the Secretary.



## IX. COMPETITION OF INDEPENDENT MILLS

At various times during the period 1936-1947 the members of the C.N.M.A. and Western Division have expressed concern about the extent of competition in the domestic market provided by mills outside the Association, usually referred to as the small mills. This type of competition was of more concern to the Association mills in the late 1930's and early war years. After 1943, Canadian flour exports increased considerably and many of the small mills thereafter devoted substantial portions or all of their production to export business and were therefore not the same factor in the domestic market as before.

There has been a striking decline in the number of small mills operating in Canada in very recent years. In 1934, independent mills with a capacity of less than a thousand barrels per day numbered 412; in 1947, there were only 155. On this account alone their importance and effectiveness as a competitive factor have been very much reduced. Most of these mills can influence Association prices only within very circumscribed areas, usually in the communities in which the mills are situated and the immediately surrounding territory. Occasionally they contract for the business of independent bakeries or stores in larger centres.

The operating and selling costs of an efficient small mill, and many of them have attained a very high degree of efficiency, are lower than those of their larger competitors, in spite of the economies which large-scale production and distribution are supposed to effect. Administrative, advertising, selling, transportation and other costs are on a much lower scale. Their advantage in these respects over the big mills is recognized by one of the C.N.M.A. members in the brief which it submitted in this investigation:

"It is perhaps peculiar to the flour industry that smaller mills can operate at proportionately lower cost than larger mills and can consequently sell their products at a lower price. These small mills often sell only to one or two customers and are not subject to the heavy expense incurred by the larger mills maintaining a large sales force in servicing their many and diversified customers."

One of the consequences of their low-cost operations is that the small mills can and ordinarily do sell in their own limited territories at prices lower, and often substantially lower, than those of the big mills. The flour produced by many of them is recognized by the larger mills as of a quality comparable with their own. The demand for the product in the communities served by these mills is evidence in itself of its quality. The interests of the public in these areas would be seriously prejudiced by any interference with the free operation of these sources of supply.

Much has been said, in the correspondence and other records which have been examined, about the loss of business which the larger mills have suffered from this competition. Frequently consideration has been given to lowering the Association price level in the particular areas affected, and sometimes such local reductions have been put into effect for limited periods. More frequently the decision has been to make no price reduction but to concentrate on the more serious problem of holding the members themselves to their price agreements. This attitude is reflected in the following extract from a letter which C. H. G. Short (Lake of the Woods) wrote to another member on June 1, 1936:

"Unfortunately one or two of our members are obsessed in regard to small mill competition. Am afraid I do not see completely eye to eye with some of my confreres in connection with the small mill problem. Certainly I'd like to see a 'live and let live' policy adopted. The Lake of the Woods regards its competition as coming from the big mills to an enormously preponderating extent. If we could keep all the big

mills in line, we wouldn't worry very much over the small mills, always providing, of course, that we didn't attempt to hold a price structure which was in effect an umbrella held over the small mills to enjoy comfortable travelling." (Exhibit 658)

The nature of this small mill competition, its extent and effects, as well as the measures taken by Association members to deal with it, are referred to more fully in the following sections. Since conditions and methods of dealing with them differ in Eastern and Western Canada, these areas are treated separately.

### 1. Eastern Canada

In the list contained in "Flour Mills in Canada, 1947," published by the Dominion Bureau of Statistics, there is only one independent flour mill in the Maritime Provinces and only one in Quebec, with daily capacity of 25 and 50 barrels respectively. In Ontario, east of the Head of the Lakes, there are 75 independent mills (including two mills with a capacity of 1,000 barrels or more). The ten Association mills in Eastern Canada (including Lakeside but excluding Copeland) have a total daily capacity of 36,500 barrels, compared with the capacity of the 77 independents (including Copeland) which amounts to 14,690 barrels. Sixty-three of the 77 independents (81 per cent) are very small mills, with capacities from 24 to 300 barrels and a total capacity of 6,465 barrels.

A majority of the independents in Ontario are members of the Ontario Flour Millers' Association. Examination of their records has not disclosed evidence of price agreements among themselves, but efforts were made by the C.N.M.A., from time to time, and particularly in the late thirties, to induce members of the O.F.M.A. to agree on a fixed differential just below the established C.N.M.A. price schedules. Reference has been made in the second section of chapter IV to the approaches made by the cereal mills of the C.N.M.A. to independent producers of rolled oats in Ontario. The correspondence quoted below relates more particularly to efforts of the C.N.M.A. to secure the co-operation of their smaller competitors in maintaining prices of flour. Flour prices of independent mills in Ontario were not normally as far below C.N.M.A. prices as they were frequently found to be in Western Canada, but occasionally differences of as much as fifty or sixty cents per barrel have been reported.

The gap between the price levels of the Association and small mills could have been closed or narrowed by a decrease in the one or an increase in the other. On this point the following extract from a report of a C.N.M.A. Executive meeting on April 14, 1936 (Memorandum No. 3) is significant:

"The feeling was expressed in some quarters that the general price level is too high compared with prices being quoted by small mills. . . .

However, it was decided to leave prices alone until early next week; in the meantime, Mr. MacLachlan and Mr. Page agreed to interview the small mills and ascertain whether they would be prepared to bring their prices more in line with those of the larger mills. If not, then the price structure will have to be revised. It was understood that Messrs. MacLachlan and Page would discuss this question with the small mills not later than Monday." (Exhibit 577)

The members of the C.N.M.A. were not unanimous in their opinion of the need and value of small-mill co-operation. An inter-office letter of February 25, 1939, gives the opinion of one of the members. It refers to correspondence between the C.N.M.A. and G. S. McArthur, an officer of O.F.M.A.:

"McArthur's letter to Murphy is rather amusing when he states there is a 'growing reluctance on the part of our members to follow your leadership'. This is the first time I ever knew they even boasted following the larger mills and in the long run it seems rather foolish to have any truck or trade with the small fellows because they do as they please anyhow. Personally, I think it is a mistake to waste time on them or give them your minutes, rules, and regulations. You are in close touch and, of course, know better than I what is best." (Exhibit 626)

The Ontario Flour Millers' Association was formed in 1935. A letter of April 22, 1936, written to the C.N.M.A. by N. H. Campbell (Lakeside, which was not then a member of C.N.M.A.) indicates that the C.N.M.A. made its first approaches almost immediately after O.F.M.A. was formed:

"It is now practically one year since the Ontario Flour Millers got together and formed our Association. At that time, we were advised by representatives of your Association that you would be satisfied if our members generally kept their prices within 10c. per barrel to bakers and 20c. per barrel to dealers of the prices agreed upon by your Association. This arrangement was fully discussed at an open meeting of our Association in London, Ontario, and in Toronto, and it met with the approval of our Association." (Exhibit 701)

While endeavouring to limit the competition of small mills by securing agreement on a recognized price differential, members of C.N.M.A. also sought to deal with the situation by permitting modifications in the Association price structure. For example, the following decision is reported in the Memorandum of Executive meeting of February 20, 1936: .

"It is understood that the present price structures remain unchanged. However, should any mill find it necessary to meet competition, a discretion of 10 cents per barrel is allowed on bakery business, and 20 cents per barrel to the dealer or jobber trades.

....

The discretionary allowance on Flour does not apply to the Maritime Provinces. It is understood and agreed, however, that one particular mill is privileged to sell in the Maritime Provinces at not more than 10 cents per barrel less than the list price, until the 10th of March, and then only to meet competition of small mills." (Exhibit 573)

Complaint against such practices was registered with the C.N.M.A. by the President of O.F.M.A. in the letter of April 22, 1936, quoted above, and efforts were eventually made to adjust the situation. On this subject C. H. G. Short wrote to D. A. Campbell on June 1, 1936, in part as follows:

"... some of our confreres insist on meeting the small mill competition, and it is because of the small mill competition to some degree that we have a discretionary price. It has been absurd on the part of the big mills, I think, for them to expect the small mills to keep at a discretion below the price of the big mills, when the small mills were not being advised what the basic structure was, and particularly ludicrous to me was the fact that the said basic structure was subject to a 20 cent discretion to meet small mill competition which was supposedly to be at a discretionary price below the big mills structure anyway." (Exhibit 658)

Agreements with the small mills were entered into from time to time thereafter. For example, in a letter of August 1, 1939, to C. H. G. Short (Lake of the Woods), reporting on a meeting with the Ontario millers, J. J. Page (Western Canada), Toronto, said in part:

"We had a very satisfactory reception from the millers,—practically all those interested in hard wheat milling, with the exception of Barber, Pinchin and McCarthy were at the meeting. I rather expected some of them to indulge in incriminations etc. and refer to the failure of last year's arrangements, but I am glad to say there was nothing of this kind in evidence, while on the other hand there was a desire—which I believe was sincere—expressed by many of those present to have a working arrangement, provided the large mills would show the way.

...

I stated that in my estimation a real effort (which had all the earmarks of being the most successful one we have made) was under way to improve conditions—that we had a good opportunity to do so coming into this crop year—and that necessarily it would take a little time to get all the angles straightened out, but that if they would work on their end of the problem and follow our prices up to within the selling levels agreed upon at previous meetings, namely a differential of 10 cents per barrel on Bakers' business and 20 cents per barrel on dealers' business, I felt sure it would be of benefit to all concerned.

...



In the meantime, they all agreed to bring their selling levels up to the C.N.M.A. levels with the differential as quoted above." (Exhibit 460)

Efforts to get small mills to adhere to a scale of established prices are reflected in the following extracts from letters passing between C. H. G. Short and J. J. Page. On August 31, 1938, Mr. Short wrote:

"If McCarthy continues as he is continuing, and I think the point should be stressed strongly to him, it will be a very short while now before the big mills are meeting his competition right in his own bailiwick, which will mean that the rest of the small mills, and the big mills themselves, are in for a protracted period of unremunerative business. Surely he has sense enough to see that with a discretion below a maintained price of the large mills he is infinitely better off than he can possibly be by setting his own price levels—which will inevitably be met, countered and possibly bettered by some of the big mills within a very short time if he persists." (Exhibit 674)

Mr. Page's reply, on September 2, 1938, included the following:

"As to the situation with MacCarthy—Since we met the Ontario millers here, Norman and Dave Walker have spent half a day with MacCarthy and Grant at Streetsville, discussing price structures with a view to stiffening up the quotations which had been going the rounds emanating from these people, and I am satisfied there has been some improvement since that interview which took place a week ago last Saturday.

I do not know whether you have heard it or not, but Pinchin has been in communication with Mr. MacLachlan about feed prices, while at the same time Pinchin's flour price has been 50 to 60 cents less than the Association mills, and I have pointed out to Mac that he has an opportunity to go after Pinchin without gloves, and tell him that if he continues quoting these ridiculously low prices, he will have the big mills structure right down to a level where there will be nothing in the business for himself or anyone else.

All we can do with these people is to work on them from the point of view expressed to the Ontario millers when we meet them, namely: that if they do not keep their selling levels up to within a reasonable point of the present list of the C.N.M.A. they are going to bring the whole price structure down on all classes of business." (Exhibit 674)

In spite of the efforts of C.N.M.A. to have an agreed basis of pricing with members of O.F.M.A., other methods were devised to deal with competition from small mills. For instance, in Memorandum No. 25 of Executive meeting of April 12, 1938, under the heading of "Report of Sales Managers", is the following:

"It was agreed that freight arbitraries would be exacted at all points, with the exception of points on the Huntsville, Bracebridge and Scotia Junction Line, and on the Parry Sound Line where competitive conditions exist with respect to Ontario mills." (Exhibit 577)

The correspondence makes it clear that the competition from the Copeland Milling Company, whose plant is located at Midland, Ontario, was regarded as of particular importance. The Copeland Company had severed its connection with the C.N.M.A. in 1934. Reference is made to Midland in the next quotation, which illustrates another method of dealing with such competition. It is an extract from a Memorandum of Decisions reached at an Executive meeting on April 5, 1939.

"It was unanimously agreed to institute special price reductions at irregular intervals on the following basis:

As a trial, the reduction shall be applicable to bakers in all towns located on or south of the branch line of the C.N.R. running from Belleville west to Midland, Ontario; and the price to be applicable to jobbers in this territory on their purchases of baker-flour requirements in jute.

It is understood that the reduction will be agreed upon at irregular intervals, at the discretion of the mills.

The frequency and amount of the reduction in price shall be mutually agreed upon between the mills on a majority vote of four (4) members. The reduction to be effected, and the time of its coming into effect, shall be made known to all members as soon after the market close on a Friday as is possible.

The period of the reduction shall be from the market close on the Friday agreed upon until the following Tuesday morning at the opening of the Winnipeg market, after which time no further business shall be accepted at the reduced price.

At the discretion of the mills, the reduction may apply to any or all classes of trade in any one or more of the Eastern Provinces." (Exhibit 473)

A few months later agreement was reached among members of C.N.M.A. that reduced or "open" prices could be quoted to particular accounts known to be customers of small mills. For instance in Memorandum No. 38 of Executive meeting of July 21, 1939, the following is reported:

"To the following Bakers in the Province of Ontario, all mills shall quote 40 cents per barrel under the lowest Ontario Bakers' basis:

Dempster  
Weston  
Henderson

To the following Bakers in the Province of Ontario, Robin Hood and Quaker shall quote 40 cents per barrel under the lowest Ontario Bakers' basis, and all other mills shall quote 30 cents per barrel under the lowest Ontario Bakers' basis:

Barker-Bredin  
Wright  
Dietrich  
Hill  
Atlantic & Pacific  
McCutcheon

Parnell (London)  
Mara  
Christie-Brown  
Phillpott  
Frances"

(Exhibit 441)

In a letter of July 24, 1939, to G. H. Booth of Winnipeg office, C. H. G. Short (Lake of the Woods), Montreal, in reporting on the above meeting, said:

"Furthermore, we gave a 10 cent privilege to Robin Hood and Quaker Oats on eleven baker accounts, whose business is mostly at this present time enjoyed by the small mills notably Pinchin [Copeland]." (Exhibit 667)

This action taken in Ontario is closely in line with a suggestion made by Charles Ritz (Robin Hood) in a letter to D. C. MacLachlan (Maple Leaf) on June 12, 1937, in which Mr. Ritz said:

"If the small mills persist in quoting extremely low prices I think we have got to consider the matter of deciding on a special basis for Western Ontario to come at least within shooting distance of their price." (Exhibit 626)

To this Mr. MacLachlan replied, on June 16, 1937:

"One thing we believe has helped create this chaotic condition in Ontario this year is the fact that our price structure has been allowed to get out of line with the small mills. In other words we have attempted to get too high a conversion, which always encourages price cutting." (Exhibit 626)

During the war years some measure of co-operation existed between the two associations, as evidenced by a letter of October 14, 1944, from the Acting Secretary of the O.F.M.A. to the Secretary of the C.N.M.A. After referring to a complaint, made some months previously, of price cutting in the Niagara Peninsula by two members of the C.N.M.A. and to the fact that as a result of the complaint the situation had been corrected, he went on to say, in part:

"Since that time, until the present, there has been a decided improvement in the conditions here, and neither one of these companies, that we could find, were breaking the established prices. But, just recently, the Robin Hood Flour Mills, for some unknown reason, have decided apparently to open this price war and, according to our members' reports, the prices given to Mr. Kostendoff are from 10 cents to 20 cents per barrel lower than the agreed prices for the Niagara Peninsula. . .

Also, we regret exceedingly to have to report that the Robin Hood Flour Mills Limited are cutting prices in several other instances. In the past, it has been the excuse

of this Company, a member of your Association, that they were forced to meet the competition of the small mills. We would, therefore, like to clear this record. In the places complained of there is no competition (*sic*) from any of the small mills that would necessitate the Robin Hood Flour Mills Limited adopting such tactics. . . .

Our reason for writing this letter to your Association is to forestall any argument advanced by this Company, as in the past, that they were forced to adopt this practice because of members of our Association—that is, small mills—competition. There is no such complication in the case we are mentioning.” (Exhibit 523)

The present Secretary-Manager of the O.F.M.A., who has held that position since November 15, 1944, stated in evidence that he had no knowledge of any such form of co-operation between the two associations. The documentary evidence contains nothing to prove the continuance of any such co-operation.

Again, at certain periods, prices at which quotations were to be made on tenders to government departments were, by agreement, intentionally kept at a low price because of small mill competition. This may be illustrated by a letter of January 25, 1941, from the Secretary to D. C. MacLachlan (Maple Leaf), R. E. Cutting (Quaker) and J. J. Page (Western Canada) in which he said in part:

“We have a price of \$3.70 per barrel second patent jute, net cash track, Montreal, freights, for Federal and Provincial Institutions in Ontario and Quebec. That, you will appreciate, has been kept at a low figure to ensure against the smaller mills walking away with the business. However, Mr. Groom [Ogilvie] feels there is no reason why an advance of 10c. per barrel to \$3.80 should not be in order.” (Exhibit 471)

It was stated in evidence that this was not a usual practice.

Small mill competition with regard to large bakery accounts was apparently considered as of particular importance. J. G. Wharry (Quaker), Peterborough, referred to it in a letter of May 18, 1945, to W. P. Noble of Saskatoon office:

“Here is the attitude the mills take in the East, Perc, on any decent sized bakery business. Copeland at Midland, Ontario—a fair-sized mill, took a crack at this bakery business in Halifax. The mills decided not to let him in or rather, to meet his price when he was into one of them, so that is one reason why this 50-car sale was made on the basis of \$4 Montreal, \$4.34 Halifax for jutes.” (Exhibit 228)

As already described in section 7 of chapter III, in the Maritime Provinces there was a system of wholesale jobber and jobber dealer discounts or commissions available on purchases subsequent to qualification. The basis of qualification was the establishment of purchases of total specified minimum quantities of flour over a certain period from certain members of the C.N.M.A. and Lakeside. The object of such a system was clearly to restrict competition from mills which were not parties to the agreement.

With a difference of opinion even among the members of the C.N.M.A., it is not possible to estimate the extent of small mill competition or to measure the success of the various efforts taken to deal with it. In the case of many of these mills, of course, owing to their small capacity, their competition would be of a purely local or regional nature and accordingly easier to keep under observation. There can be no question, however, that concerted efforts have been made by the members of the C.N.M.A. to ensure that the competition of independent mills would not materially affect their price-fixing arrangements.

## 2. Western Canada

Among the mills listed in the report “Flour Mills in Canada, 1947”, there are 81 independent mills in Western Canada, i.e., from the Head of the Lakes to the Pacific Coast, with a combined total daily capacity of 12,980 barrels. In the same area there are thirteen Association mills (including Ellison) having a total daily capacity of 37,320 barrels. Seventy-six of the 81 independents (over 93 per cent) are comparatively small mills, with capacities from 25 to



300 barrels and a total capacity of 7,730 barrels. Of the independents there is only one mill having a capacity of 1,000 barrels or more, its capacity being 3,400 barrels. This mill did not operate during the war years, but was re-opened under new management in 1946. For some time it was engaged solely in grinding for export, but is now reported to be grinding for the domestic market as well.

A 1937 estimate of the volume of business done by the western small mills showed that at that time they had between 28 and 32 per cent of the total business. The estimate was based on a survey made by the Secretary, which is referred to by the representative of a western company in a letter of September 24, 1938:

"I do not know if you saw a statement produced by Noel, the Secretary of the Western Association, about a year ago. This was a combination of the estimates by individual sales executives of all the mills scattered over Western Canada of the volume of business done outside of the Association mills. When all the figures were combined and tabulated, the statement showed that the Association mills enjoyed probably from 68 to 72 per cent of the whole, leaving 28 to 32 per cent for the small mills." (Exhibit 626)

The small mill percentage must have varied considerably from year to year, to judge from the comments on loss of business in the correspondence of the members.

There were sharp differences of opinion among the members as to the best method of meeting this competition. Some felt that it should be ignored; others, that they should isolate the competition by agreeing on price reductions in the areas most seriously affected. Other Association mills took it in their own hands to quote lower prices to certain customers, even in violation of their agreement. Some members admitted frankly, in letters exchanged among themselves, that their fixed prices were too high compared with the prices of the small mills, and had the effect of inviting the small mills to take away their business. Some of the considerations which weighed with the members, and some of the methods they used or proposed, are set out in the correspondence which is quoted below.

Mr. J. J. Page (Western Canada) expressed himself as follows in a letter to Charles Ritz (Robin Hood) on September 29, 1938:

"There seems to be a sharp difference of opinion in the West as to how to combat the small mills . . .

It is true that the country mills are quite keen competitors of the larger mills, and have been giving us quite a bit of trouble, but I do not think we can do other than accept the recommendation of our Western men who, with the one exception, say we should maintain our present grades and our relative selling bases."

(Exhibit 613)

To this letter Mr. Ritz replied, in part, on October 1, 1938:

"Our conversions in the west this year are a decided improvement over last or almost any year since 1930 and we could have even done better had Ogilvies not taken an arbitrary position. At the meeting I attended in August in Winnipeg, everyone was in accord and recognized that we had a perfect set-up this year. We all knew that stocks in buyers hands the world over were light, that there would be a rush for supplies once the new wheat started to move in volume and we could have had just about any price we cared to ask. Our experience is that we must make the money in the fall of the year and not depend on the lean, cold winter months.

My own feeling is that we should not pay any attention to grist mills and small mills in the fall of the year when we are running fairly close to capacity and this year in particular I think it is a mistake to pay any attention to the grist mill. Am sure not many farmers will grist 80c. wheat when they can buy flour on the basis of 60c. wheat. Small commercial mills, of course, are bound to do business and we should be careful to see that we do not hold the umbrella over them to the point where they will become a bigger factor than they are today. If we could formulate some plan to isolate this competition as we did in Winnipeg, it probably would be the thing to do,

but I am sure we would not be in favour of a wide open differential of a \$1.00 a barrel. This, in my opinion, would only have the effect of breaking down the whole structure in a short time, with very little gain in volume to any one mill.

About a year ago the Secretary of the Western Association, with the aid of the Sales Managers in the west, made a survey of the business done by small mills. He found the Association mills enjoyed between 68 and 72 per cent of the whole and left between 28 and 32 per cent for the small mills. Now, if we succeeded in taking away a third of this small mills business at a very low price and then succeeded in getting down the conversion on the balance of our business, it is not difficult to understand what a high price we would pay for this doubtful increase in volume." (Exhibit 613)

Loss of their business to many of the small mills made the C.N.M.A. members acutely aware of the wide spread between their agreed prices and the prices quoted by many small mills. This was so particularly in the 1930's and the early war years. While there were frequent references to the "ridiculously low" prices of their competitors, there was also a recognition, on the part of some at least, that their own prices were unduly high. One strong expression of this point of view is found in a letter of February 23, 1942, from G. S. Dodington (Western Canada) to J. W. Horn, the Company's Western Manager. He refers particularly to the competition of the small mills as in part responsible for the Association's difficulties, but links with them another Association member, Robin Hood, which was accused of making special deals in spite of their agreement to maintain prices. The letter in part is as follows:

"There is one very certain condition, and that is that the small mills have given us (and I mean all the large mills, with the exception of Robin Hood) a tremendous licking. Robin Hood have not suffered to the same extent by reason of the popular demand they have built up, and more particularly, by reason of the special deals they have with chain organizations. The attempt that was made in the early fall of 1939 to deal with this situation should not have been abandoned by the other members of the Association. I think if you had persisted in keeping the list prices down at that time it would have brought them to the point where they would have to revise their present arrangements, which I understand call for a definite allowance from the established list.

There is one thing very certain, and that is, if the large mills are not going to be crowded out of the Western business by small mills and Robin Hood competition, they must face a substantial reduction in the present list prices. There is not, to my mind, any use in continuing to try and extract an abnormal return from the Prairie Provinces, for in the first place, the longer we do it the more we shall suffer, both from the small mills and from Robin Hood, who through their large distribution through chain organizations are unquestionably making special prices, or have special deals which enable these organizations to sell flour at prices not so far removed from the small mills as the rest of us are, and apparently still make a satisfactory margin.

You may say that it would be a destructive move to reduce the list prices, but what is the use of maintaining list prices if we are not doing any business?

By reducing our list prices to a point where we may be able to encourage some of the lost business back, we shall be curbing, at least to an extent, the activities of the small mills, and we shall also be placing Robin Hood in a very difficult position in maintaining their present arrangements with the chain organizations, and I do not doubt that if this was done we would, through increasing our flour sales, possibly make a better net return for the Company.

I can well appreciate that Robin Hood will fight to the bitter end any reduction in our list prices, because it certainly does not serve their purpose to have a low list, but, should we all stand to one side and let them have their way, knowing as we do that they now control a heavy percentage of the top patent business in Western Canada and that they are getting this distribution largely through chain organizations as a result of special deals.

We have an expensive sales organization to maintain, and the morale of our salesmen in the West cannot possibly be maintained under such discouraging conditions as they now face. I think that the Western Mills, apart from Robin Hood, should face up to this situation in a very realistic manner in order to prevent further losses, and to regain some of the ground which we have all sacrificed. There seems little use to continue burying our heads in the sand. We are losing rapidly every year, and rest on the hope that when economic conditions improve many consumers will swing back to the top patent flour of the large mills; but this is really 'wishful thinking' and not, in my opinion the way the matter should be attacked. There was a time when we



could demand and obtain the wide margins which Western business gave us, but we are face to face with an entirely different set of conditions, and I think that unless we change to meet the existing conditions that we are just holding the umbrella over the small mills and Robin Hood and that our position, and that of the other large Member Mills, will continue to decline." (Exhibit 460)

In his oral evidence with respect to this letter Mr. Dodington pointed out that while the margin in the Prairie Provinces might look abnormally large, after taking into consideration all the expense factors it reduced the return to a very small amount. He went on to say:

"You might refer to it as an abnormal return in relation to the competition situation in regard to small mills, but not an abnormal return so far as our company was concerned." (Evidence, pp. 1299-1300)

Mr. Dodington had had before him letters from western representatives of the company, including one from J. A. Humphries of Calgary, written on February 3, 1942, from which the following is taken. He was referring to "the economic plight of the farmer" as one of the major reasons for the company's loss of business in Western Saskatchewan:

"... his [the farmer's] position at the moment is such that he cannot afford to buy top patent flour unless he can buy it at a price comparable with the price charged by small mills, such as was the case a year ago last Fall. Today, however, the farmer has to pay approximately one dollar per sack more for top patent big mill flour than for the product of his local mill (which by the way I am informed is a very fair product). This the majority of them cannot afford to do." (Exhibit 460)

The inter-company correspondence includes also a letter from J. W. Horn of Winnipeg, February 5, 1942. Referring to small mill competition, he said:

"Personally, I am no defeatist but I certainly cannot see how the Association mills can expect to compete with the smaller mills on the Prairies with their top patent flour at as much as \$2.00 per barrel over the price at which these small mills will sell what is considered a fairly decent grade of flour to the farmers on the Prairies." (Exhibit 460)

Mr. Humphries made a later report, on March 9, 1942, in which he said:

"... Years ago we enjoyed a much greater volume than at present. Why didn't we maintain or increase that volume? In the first place there came a time when purchasing power was considerably reduced, and farmers (who are the largest buyers of flour) turned to the small mill for a cheaper product, we continuing to maintain the high price structure ...

"... Regarding the small mill product, due to our insistence on a high price structure we have held an umbrella over these mills. They were able to undersell us by a wide margin, and at the same time improve their plants and equipment, until today a great many of them are turning out a product equal of producing a loaf of bread acceptable to a large percentage of our Western population. Our policy of a high price structure simply made it possible for these small mills to improve their plants so that they were able to compete with us on a quality basis.

"Let us face the facts. Aren't we doing business in much the same way as we were twenty-five years ago, and aren't we all the time trying to get our price up when we should be working out ways and means of getting it down.

Most businesses today are working to get their prices to the consumers down, but with us we are working to get them up. I maintain that if it were not for our sales organization it would not be long before Purity Flour would disappear entirely from the stores." (Exhibit 460)

Representatives of another company (Quaker) in 1945 took the same view of the Association's price levels at that time. J. G. Wharry, writing from Peterborough to W. P. Noble of Saskatoon on April 3, 1945, said:

"I think it is perfectly ridiculous for us to stand by a price structure for bakers, which makes it possible for mills controlling bakeries or for small mills to come in and steal the business." (Exhibit 228)



In similar vein was Mr. Wharry's letter of April 26, 1945:

"As I see it, Perc, we have mill controlled bakeries on one hand, Robin Hood financed bakeries on the other hand, with a few strictly independents left in the middle in a boiling pot. We are losing them because we are holding too stiff a premium over the small mills, or at a price higher than the small mills are getting for export, so we are just inviting the small mills to step into the western independent bakeries. You depend on the independent baker for your business in the West and I don't know why you should hold an umbrella over the Robin Hood financed or the mill controlled bakeries."

(Exhibit 228)

Mr. Noble's reply of May 3, 1945, contained the following comment:

"As to mill-controlled bakeries, the mills concerned out here have always maintained that they charge these bakers full list price, and that is one of their strongest arguments in favour of keeping the structure up. From our point of view, it probably should be one of our strongest arguments to lower the structure because in holding it up we are simply helping the mill and the mill-owned bakeries to make a nice margin of profit on their investment.

... Just what is your idea? Is it that we should break away from the agreement on bakers and work independently or do you think the structure is too high and that it should be reduced? I can't see where we have very much to gain by having another agreement on a lower structure. We would still be in the same relative position except that it might be possible to get a little business that is now going to small mills, although I doubt this, because the other mills would not be agreeable to lowering the structure enough to meet the small mills."

(Exhibit 228)

The answer to Mr. Noble's question came in a letter from Mr. Wharry of May 18, 1945:

"All right, Perc, string along with the agreement, but I still think the price structure on bakery business does three things in the West. First, protects profits on mill-controlled bakeries. Secondly, protects profits on mill-financed bakeries. Thirdly, lets small mills take independent bakery business. Any price structure set up on this basis is wrong as far as we are concerned, because I am quite sure if Robin Hood were in our position they would not be very keen about this same price setup.

I would certainly keep the situation constantly before the meeting and who knows, maybe it would be a working basis for you to get either a share of the mill-controlled bakery business in the West or use it as a threat to make some of these other mills stay away from independent bakeries. I think if you lose business from an independent baker to a mill that controls bakeries in the West because that mill cut the price, then I would certainly let my own conscience guide me as to where you wanted to go on price.

Yes, Perc, the mills have an arrangement in the East to cover bakers' business but with our Montreal cost on second patent today \$4.62 in jute and flour actually selling at \$3.90 in jute, 72 cents under our cost, I think you can figure out that the agreement doesn't mean very much because if we went much lower we would be selling under the price of the wheat.

We don't make a profit on any bakery business in the East. Only last week one of the mills sold a bakery in Halifax 50 carloads on the basis of \$4 Montreal for jutes, which is 62 cents under our full cost, which would leave us 37 cents for converting.

Here is the attitude the mills take in the East, Perc, on any decent sized bakery business. Copeland at Midland, Ontario—a fair-sized mill—took a crack at this bakery business in Halifax. The mills decided not to let him in or rather, to meet his price when he was into one of them, so that is one reason why this 50-car sale was made on the basis of \$4 Montreal, \$4.34 Halifax for jutes.

Actually it is the same mills you are competing with in the West and while this fellow in Halifax happened to be a 50-carload buyer, the big mills did not decide to let the other fellow in but when it comes to a place like Prince Albert, they say we should hold the structure up to protect everybody in the West.

The unfortunate part of the whole thing is that most of these mills are very badly in the excess profit bracket and they do not care if they sell flour at \$2 a barrel.

All in all, I don't suppose there is very much can be gained, but if any of these mill-controlled bakeries snipe at the independents, you apply the medicine." (Exhibit 228)

Mr. Wharry wrote in similar vein to a competitor, C. E. Soward, representing Maple Leaf, a company which itself controls several bakeries in the West. The following is an extract from his letter of May 18, 1945:

"We are competing against three tough setups. First, mill-controlled bakers. Second, mill-financed bakeries. Third, such a high price structure that small mills can come in and take the business from the few remaining independent bakeries."  
(Exhibit 228)

A practice sometimes referred to as "isolating competition" was engaged in at times by members of the Western Division. In one form it consisted of agreement on a special reduction in the Association price structure in a particular area to offset the competition of one or more small mills. It may be illustrated by a letter of January 26, 1937, from C. H. G. Short (Lake of the Woods), Montreal, to G. H. Booth of the Winnipeg office, in which he said in part:

"I have for acknowledgment your letter of January 23, to which is attached minutes of the meeting held in Winnipeg January 20 and 21.

... I am very interested to note that the lowering of the price structure at Vancouver came up for discussion, some of the members suggesting a reduction of 30 cents per barrel, but when it was pointed out that the Alberta structure had already been reduced 10 cents per barrel to meet small mill competition a compromise was finally effected by reducing prices 10 cents a bbl. on territory west of Hope to Vancouver and including Vancouver Island, but no change was made in interior British Columbia or Prince Rupert. As a compromise we must content ourselves with it, although I agree with you that the reduction will not likely increase the flour sales of the large mills to any extent. Let us find consolation in the fact that the original effort to reduce 30 cents per bbl. went by the boards."  
(Exhibit 677)

In another case Ogilvie was permitted by the Association to meet the competition of a small mill which had been selling to a particular bakery in Winnipeg at a relatively low price. This decision is reported in the minutes of Executive meeting of January 20, 1938, as follows:

"... a member is held to be in the position to utilize a temporary discretion in respect to a single bakery plant in Winnipeg."  
(Exhibit 686)

In reporting on this meeting to C. H. G. Short, in a letter of January 24, 1938, G. H. Booth (Lake of the Woods) said in part:

"He [E. B. Frost of Ogilvie] ... asked the meeting if they were prepared to allow him sufficient leeway to make a dead-set for Speirs-Parnell business with a view to taking it away from the Soo Line Mills in Winnipeg. Quaker saw no objection to this, as they are not getting any business from Speirs-Parnell anyway; Mr. Horn [Western Canada] did likewise ... Robin Hood stated that they were prepared to give Ogilvies a temporary discretion pending a discussion with their General Manager, Minneapolis; ... I asked ... what effect this arrangement would have on the Bakers structure generally—requesting that definite assurance be given that any temporary arrangement entered into with Ogilvies in Winnipeg would not affect the Bakers structure throughout the West. Bill White [Quaker] passed the remark that he would not be a party at any time to a discretionary allowance being made to a preferred list of Bakers, although he stated he did not mind making the one exception with Ogilvies and Speirs-Parnell in the meantime ...

"... February 8, 1938, ... was the date agreed on for Ogilvie's discretionary allowance in regard to handling Speirs-Parnell business."  
(Exhibit 686)

The minutes of the Executive meeting of February 8, 1938 were not available, but Ogilvie was apparently permitted to continue to utilize this discretion, as in a letter of March 1, 1939 to H. Groom of Montreal office, E. B. Frost (Ogilvie), Winnipeg, said:

"At Winnipeg it is our privilege to quote Speirs Parnell any price we desire in order to get the business from the local ... miller. However, this matter has been discussed at various times so I think you are well acquainted with conditions."  
(Exhibit 596)

Another form of the method of isolating the competition of small mills was the introduction of a special brand of flour at a special price for use in a particular

area or areas. This method appears to have been first agreed upon at an Executive meeting of February 22-23, 1938. The minutes of that meeting contain the following decision:

"Agreed that it is permissible as an experiment to pack a special brand of flour (not higher in grade than Second Patent Flour) for sale to the dealer trade only, and at present to be restricted to Winnipeg, at a spread of 40c per barrel below the basis for Second Patent Flour.

Members making use of this plan shall each register with the Secretary the brand chosen for it." (Exhibit 1)

On being asked the purpose of this decision, the Secretary replied:

"... I would say that this decision was reached in order to take care of competitive conditions which had arisen in Winnipeg.

Q. From small mills?

A. Yes."

(Evidence, p. 49)

Subsequently, at the Executive meeting of August 24, 1938, this decision was rescinded and a new agreement entered into applicable to sales to the bakery trade:

"Agreed to market for sale to the bakery trade only in Greater Winnipeg and Selkirk a special brand of flour (not higher in grade than Second Patent Flour).

The price for this special brand is to be arranged from time to time by E. B. Frost and J. W. Horn in consultation with D. P. Noel who will advise the members.

The price established from time to time for sales of the special brand to bakers in any quantity for one day only at arranged intervals shall be on the understanding that delivery is effected within 48 hours of each day of sale." (Exhibit 4)

The purpose of this agreement is clearly outlined in a letter of October 26, 1939, from E. B. Frost to H. Groom, in which he said in part:

"The reason for the special price in Winnipeg to the baking trade only was, as you will recall, put into effect to bring back to ourselves and other competitors some of the flour business stolen by our . . . competitor at prices which under our conference arrangements could not be obtained.

Every week or two we have a bakers' special. The quotation is given for twenty-four hours only and the flour sold during that period is to be delivered within forty-eight hours from date of the special. I think you will agree that no baker due to these strict arrangements could take in very much flour as their space is limited." (Exhibit 597)

This arrangement was reaffirmed from time to time at subsequent meetings. The minutes of the Executive meeting of August 19-20, 1941, set out the following decision:

"The distribution of the regular mill brands (2nd Patent Flour) in place of the above special brands is now to be considered optional." (Exhibit 27)

In the available minutes of Executive meetings the last reference to this arrangement is found in those of July 16, 1943, wherein it is stated:

"The Winnipeg Baker special basis is restricted to Greater Winnipeg and Selkirk (it does not apply, for instance, to Portage la Prairie). (Exhibit 56)

In the oral evidence it was contended that this arrangement was no longer in effect.

A similar method of isolating competition was introduced in a section of Alberta in early 1938. In the minutes of a regional meeting held in Calgary on March 11, 1938, the following decision is reported:

"Members are agreeable to any Member marketing a special grade of flour at 40c per bbl. under Second Patent, such grade to be lower than Second Patent—approximately Straight Grade Flour—to meet Small Mill competition in the following territory:

*C.P. Ry.—Bruderheim to Myram*

(Territory directly North to River included)



*C.N. Ry.—Bruderheim to Manville*  
(Off-Railway points South of this line not included)

Bakers' business in the proscribed territory will not be solicited for the above grades." (Exhibit 2)

The minutes of a meeting held on October 21, 1938, (Exhibit 8) reported that the mills were no longer selling second patent flour at the reduced price and that the system had been a failure. In spite of this the arrangement was apparently kept in effect; its discontinuance was not decided upon until August, 1941, when the minutes of an Executive meeting record the following:

"The practice of marketing a Second Patent brand in an area in the northern part of Alberta at a special spread of 40c per barrel below the recognized basis for Second Patent Flour (that is to say, 90c per barrel below First Patent Flour) is to be discontinued immediately. This decision is subject to cleaning up present stocks within the area. The Secretary is to be furnished with a list of such stocks." (Exhibit 27)

In the latter part of 1938 and early 1939 Ogilvie strongly advocated the packing of a special brand of flour to be marketed generally at country points where small mill competition was encountered, with the suggestion that a special spread of approximately one dollar per barrel under first patent flour would be required. The other members of the Western Division opposed such a sweeping arrangement. The principal objection is outlined in a letter of September 24, 1938, from one of the Western representatives to his company's representative on the Eastern Executive in which he said:

"Any such move on the part of Ogilvies would result in the complete demoralization of our present price structure, and lower the return to the mills. The general feeling of all the others, we believe, is that small mills are less of a factor this fall than they have been for some years. It may be a little too early to judge, but that is the present impression. Top patents are available to the farmer trade at under \$3.00—actually at around \$2.70 to \$2.75, and psychologically, after three or four years of higher prices, this looks like cheap flour to the farmer." (Exhibit 626)

Although at one stage Ogilvie threatened to withdraw from the Western Division if the proposal was not promptly and fully considered, there is no indication that it was ever adopted.

Another method used in efforts to restrict small mill competition involved the utilization of a special system of quotation on certain Government tenders in British Columbia. The reason for this arrangement is set out in a letter of May 16, 1944, from C. E. Soward (Maple Leaf), Toronto, to W. L. MacGregor (Lake of the Woods) in which he said in part:

"While I was in Vancouver recently, my attention was called to the fact that the large mills were losing out on government business which was going chiefly to the Vancouver Flour Sales. Mr. Jack Clark (Western Canada), Chairman of the Vancouver group, told me that he estimated some 10,000 barrels had been lost to the Vancouver Flour Sales, who, of course, know the Association price and are, consequently, in position to put in lower tenders on small mill flour. Of course, they are also able to pick and choose the best type of government business and leave the most undesirable to the large mills. I suggested that the Association should adopt the system in effect at Halifax, and have one or two representatives handle all the tenders and vary the price so that the Vancouver Flour Sales would not know the Association government price and consequently, make it more difficult for them to get this business.

Mr. Clark and our man, Mr. Copas, thought it was time we adopted some new system so as to secure a better share of the business for the large mills. On my return through Winnipeg, I took the matter up with Mr. Noel, the Secretary, and I notice the subject is on the agenda for a meeting to be held in Winnipeg on Friday of this week. Mr. Dodginton is in favour of attempting something along this line. I also spoke to Mr. Davis, who has posted his people. I was wondering if you would care to drop a line to Mr. Booth and tell him how satisfactory the Halifax system has worked out for government business, and get his support. I think you were responsible for finally getting the eastern Executives to the point of taking action in overcoming the troubles we used to experience in obtaining government business in Halifax and, no doubt, you would be glad to see the Vancouver situation similarly dealt with. The only difference in the

Vancouver problem would be the necessity of giving the representatives at the coast authority to vary the price in order to meet the competition of the Vancouver Flour Sales—rather than have a fixed price, as we have in Halifax.

The Vancouver Flour Sales, as you probably know, is the company who has the Wild Rose brand which is so popular in Vancouver, and between that business and the government business, they are building up a mighty fine volume of business at the coast. It seems to me it is time we gave them some competition. Needless to say, it is very discouraging to our representatives to see so much business going past them, even though they know that we don't need to worry about it as far as volume is concerned, in view of the export demand. However, for the long term, it does not seem good business to leave the Vancouver Flour Sales with such a free hand in Vancouver as they have enjoyed during this past year or so." (Exhibit 489)

The decision to use this special system of quotation is reported in the minutes of an Executive meeting of May 19, 1944, as follows:

"It was decided to make arrangements at Vancouver to quote on certain specified business of the Department of Munitions and Supply similar to those in operation in Nova Scotia and New Brunswick. The Secretary shall issue the directive, a copy of which is to be furnished the members of the Executive." (Exhibit 68)

On May 22, 1944, C. E. Soward wrote to H. N. Davis (Ogilvie), Montreal, informing him of the report he had received in connection with this meeting:

"I have just heard from Winnipeg this morning to the effect that at the Executive Meeting on Friday, they decided to try out the Halifax system for quoting on government business at Vancouver. I think a discretion of so much under list, is being given to Mr. Clark (the party put in charge of government quotations). I don't imagine the small mills are selling this flour as cheap to Vancouver Flour Sales as they used to, since they are all getting G.R. [British Ministry of Food] business, and their ideas will be influenced accordingly. At any rate, the experiment will be worth trying and the field won't be so quite wide open for Vancouver Flour Sales in future." (Exhibit 489)

The proposed procedure was clearly outlined in a letter of June 8, 1944, from J. Clark (B. & K.), Vancouver, Secretary of the Vancouver group, to Mr. Noel in which he said:

"Following receipt of the directive issued by you on the subject of tenders of the Department of Munitions and Supply, a meeting of the Vancouver members was held to discuss and draw up a plan to give effect to the suggestion therein contained. As a result the following was agreed upon,—

That any special price should apply only to Vancouver, Nanaimo and Esquimalt tenders; that all members should complete tenders regardless of prices used, as it was felt that failure to do so might lead to some questioning. The members also agreed that a maximum price discretion of 20c per bbl. would be enough to start with, this of course could be increased later if found necessary.

The procedure agreed upon was that each month three members should use price differentials of 10, 15, and 20 cents per bbl., that the balance of the members use the regular list. This would be alternated each month, when three other members would follow the same procedure, the rest using the list.

The first three members authorized to use the special price basis were selected by lot and these were: The Brackman-Ker Milling Co. Ltd., Lake of the Woods Milling Co. Ltd., and Maple Leaf Milling Co. Ltd. It was understood that on the present tenders they would quote as follows:

<i>B &amp; K</i>	<i>Lake of the Woods</i>	<i>Maple Leaf</i>
20c Vancouver	15c Vancouver	10c Vancouver
15c Nanaimo	10c Nanaimo	20c Nanaimo
10c Esquimalt	20c Esquimalt	15c Esquimalt

the members to leave the flour prices open when sending their tenders to the Secretary, who would then complete this portion of the tender.

Members agreed that the Secretary be authorized to select the name of the three members using the price differential on all future tenders and the figures at which the tenders are to be priced. Members would be advised of the prices quoted only after all tenders had been completed and sent in to the Department of Munitions and Supply.

Our tenders for the month of July requirements do not have to be submitted until June 20 so if there are any criticisms or suggestions that you would like to make regarding the above arrangements will you kindly advise us in time so that these may be followed out." (Exhibit 460)



In July, 1944, a recommendation was made that a similar plan be adopted for use on quotations to British Columbia Provincial Government institutions, since Western Division members had not been successful in recent tenders to them. In the minutes of the next Executive meeting on August 18, 1944, the following decision is reported:

"Carlot business only of the British Columbia Provincial Government shall come under the arrangement applicable to certain B.C. business of the Department of Munitions and Supply of the Dominion Government.

The means of consultation on Dominion and Provincial Government tenders between members of the Vancouver group shall continue under the guidance of Mr. J. Clark, Vancouver.

Tenders to the British Columbia Provincial Government shall specify prompt acceptance and be limited to delivery of flour within thirty days. The Vancouver group (through Mr. J. Clark) shall interview the Purchasing Agent to explain the reason for the limitation." (Exhibit 70)

Another illustration of restriction of small mill competition is found in the purchase and dismantling of the plant of the Atlas Flour Mills Limited in Vancouver by five members of the Association in 1941. At the time of purchase the capacity of the mill was 600 barrels per day and the purchase price "\$30,000 less any Federal, Provincial or Municipal taxes or any other charges accruing up to the time the property is turned over to the purchasers by the owners". The companies concerned in the purchase were Lake of the Woods, Maple Leaf, Ogilvie, Western Canada and Robin Hood; the details of the transaction were handled through their Toronto or Montreal offices and the Secretary of the C.N.M.A. Some of the equipment in the plant was purchased by some of the participating companies, the rest scrapped and the property disposed of.

According to oral evidence of representatives of the participating companies, the mill was first offered for sale by the owners and the purchase price was absurdly low in relation to its actual value. It was also stated that the mill did not operate steadily and was clearly an uneconomic plant which could never operate successfully. While one representative claimed that so far as his company was concerned the purchase was made simply to acquire machinery which was becoming difficult to obtain, others admitted that the purchase was an experiment, though a foolish one, to eliminate a small and uneconomic plant. Another admitted that the mill always was "a bit of a menace" and generally cut prices when it did operate. C. H. G. Short (Lake of the Woods) wrote to G. H. Booth on March 6, 1941:

"... we have as a group purchased it, each contributing our share, and it will be shut up and dismantled. I hope it will improve the situation." (Exhibit 698)

The Atlas mill had been the subject of previous correspondence between them. In a letter of March 15, 1937, Mr. Booth referred to the activities of the Atlas mill and Vancouver Flour Sales in Vancouver as "one of the most serious problems for the consideration of all General Managers". He added that they were "enjoying a regular harvest", and that certain private brands packed by Atlas were "constantly sold at from \$1.00 to \$1.60 per barrel under regular Mill Brands. This means a loss in volume of approximately 1,000 barrels per month". (Exhibit 699)

The documentary evidence indicates that on various occasions prior to 1941 the competition of this mill was regarded as "a very disturbing factor" by members of the Association and there can be no doubt that one of the main reasons for the purchase was to eliminate it as a competitor. While its dismantling probably had little effect on the Canadian productive capacity, representing approximately one-half of one per cent, there can be no doubt that the public, particularly in the British Columbia area, were deprived of the benefits of its price competition. The amount of this competition can be gauged to the extent that it was considered worth while removing it as a competitor.

There is no evidence to indicate that any other purchases of such a nature were made by members of the C.N.M.A. or Western Division.



## X. RELATIONSHIP BETWEEN THE C.N.M.A. AND C.N.M.A. (WESTERN DIVISION)

The Western Division of the C.N.M.A. was established in 1936 by a resolution passed by the Executive Committee on April 14th of that year. The resolution (Exhibit 650) recorded that it was considered in the interests of the milling industry to establish a Western Division "to more effectively deal with the problems of the industry".

In the course of the oral hearings it was contended by representatives of the companies examined that the Western Division was an autonomous unit, although its membership, with the exception of Ellison, is comprised of companies carrying on business in Western Canada which are members of the C.N.M.A. Although this is correct in the sense of formal organization, the evidence leaves no doubt that a substantial measure of control is exercised through the C.N.M.A. and its members. This is only logical since the head offices of the members of the Western Division, with the exception of Robin Hood, are in Eastern Canada and the companies are generally represented on the C.N.M.A. Executive by senior officers.

As a general rule it would seem that, while the Western Division has considerable independence in matters of a regional nature, the broad outlines of policy are formulated by the C.N.M.A. Executive, and the Western Division is expected not to deviate from them without reference to the C.N.M.A. Executive. The scope of the authority of the Western Division has extended to prices, since all variations in the structures obviously could not be submitted to the C.N.M.A. Executive for approval and it has been considered that the Western representatives, being on the ground, were in a better position to make such decisions. Nevertheless, price questions considered to be of more than routine importance have been referred to the C.N.M.A. For example, in a letter of January 27, 1940, addressed to R. A. Henderson (Robin Hood), G. A. Morris (Ogilvie), and C. H. G. Short (Lake of the Woods), D. E. Murphy said in part:

"Mr. Noel writes that tenders are out for the supply of flour and cereals for the Department of Indian Affairs, Ottawa, for Indian Agencies scattered throughout Manitoba, Saskatchewan and Alberta.

He points out that the differential for this class of trade is 50 cents per barrel under the bakers' basis and that therefore quotations would be \$4.60 per barrel, net cash, jute, f.o.b. railway point. \$4.80 less carload.

He advises that the western members are disposed to consider making a special price for the tenders now under review, particularly in regard to the flour for certain of the Indian Agencies required in carload lots, inasmuch as lately such business has been going to the small mills.

They wish to know whether the Eastern Executive see anything in the way of quoting on the carlot business at a price below that named above pertaining to the west, although no indication is given of the price they should like to quote.

Western members are convinced that they must quote lower than the present basis if they are to be competitive with small mills. The quantity involved is approximately 11,000 barrels of flour.

I shall be pleased to have your views in the matter."

(Exhibit 606)

When quotations were made in Eastern Canada for deliveries in the West there was close liaison and co-operation between the C.N.M.A. and Western Division and such quotations were made on the basis of western prices. For

instance, in the minutes of the Western Division Executive meeting of May 19, 1944, the following is reported:

"The Executive discussed the general situation and the specific case of sales made in the East for delivery of flour to bakery establishments in the Western Division. It was reiterated that the baker structure in the West should be made to govern such sales in all respects." (Exhibit 68)

Subsequently, in Memorandum No. 82 of C.N.M.A. Executive meeting of June 14, 1944, there appears the following:

"The secretary was instructed to notify each member that in respect of quotations to Chain Stores<sup>1</sup> in the East, for delivery in Western Canada, such quotations must be strictly in accordance with the basis established by the Western Division of the Association." (Exhibit 571)

The dependence of the Western Division upon the C.N.M.A. is concisely pointed out by L. A. Eagleton (Maple Leaf), Winnipeg, in the following extract from a letter of May 29, 1944 to C.E. Soward of the Toronto office:

"When I attend the Eastern Executive meeting, I rather hope that they will bring up the question of the Western situation, particularly with regard to baker's prices, for I would like to point out to the Eastern Executive that it is essential for them to support our Western Association, otherwise it is very difficult to hold prices out here in line. If I succeed in doing this, I will feel that my trip East has been a success." (Exhibit 489)

Possibly the clearest illustration of the position of the Western Division in relation to the C.N.M.A. in matters of policy is contained in a letter of May 30, 1944, from G. H. Booth (Lake of the Woods), Winnipeg, to W. L. MacGregor of the Montreal office. After referring to the introduction of the special system of quotation on tenders to the Department of Munitions and Supply in British Columbia, which was designed to counteract small mill competition, he said:

"I do not think that anything has been left undone to make this idea a success, and I only hope that we can adopt a similar arrangement in respect to the other classes of Government business available in Western Canada, which would indeed be an ideal situation, but it can only be brought about by unanimous approval of the Eastern Executive who, in turn, would instruct their respective Western men." (Exhibit 708)

As its name implies, the Western Division is a branch of the C.N.M.A. It was established, according to the C.N.M.A. resolution preceding its formation, to deal more effectively with the problems of the industry. Uniformity of prices has been, clearly, an important problem of the industry and one of the principal objects of the C.N.M.A. This object has been furthered by many of the activities of the Western Division, but the authority to carry on these activities has been a delegated authority, and the responsibility rests with the members of the organization which created the Western Division and who direct the affairs of the member companies.

<sup>1</sup> "Chain Stores" in this extract was amended to read "Chain Bakeries" in a circular letter from the Secretary to members of The Executive dated June 24, 1944. (Exhibit 606).

## XI. RELATIONS BETWEEN MILLING AND BAKING INDUSTRIES

In the period following the First World War a number of the larger flour milling companies secured financial control of larger bakeries in various sections of Canada which were grouped in chains of what have been termed mill-controlled bakeries. It seems evident that the primary motive in such acquisitions was the desire of the controlling company to establish a position in which it would be assured of the flour business of the bakeries acquired. It was found by the Royal Commission on Price Spreads that in 1935 the milling industry controlled a majority of the large baking companies in Canada and had a financial interest in a substantial number of other bakeries. The Commission reported that "the existence of these inter-relationships between mills and bakeries results in the removal from the competitive flour market of a substantial demand for flour."<sup>1</sup>

In 1922 Maple Leaf secured a stock interest in Canada Bread Company, Limited, one of the first and largest of the multiple bakery companies, and apparently by 1922 had obtained a controlling interest which has since been maintained. This entrance into the bakery field was followed by the acquisition of control of Canadian Bakeries, Limited in 1925 and of Eastern Bakeries, Limited in 1929. Maple Leaf thus controls baking companies operating in all provinces except Prince Edward Island. Eastern Bakeries, Limited has bakeries in Nova Scotia and New Brunswick. Canada Bread Company, Limited operates under its own name and through Pain Moderne Limitée (which Maple Leaf controls through Canada Bread) in Quebec, and also under its own name in Ontario and Manitoba. Canadian Bakeries Limited has plants in Saskatchewan, Alberta and British Columbia. From available information it would appear that the flour used by these companies would constitute about one-seventh of the total amount of flour used by all bakeries in Canada and about one-third of the amount used by multiple baking companies.

Lake of the Woods acquired control of Inter City Baking Company, Limited in 1928. This bakery chain consists of A. & L. Strachan Limited, Montreal, Brown's Bread Limited, Toronto and Standard Bread Company, Limited, Ottawa. In 1929 Lake of the Woods acquired control of Inter City Western Bakeries Limited which had 9 bakeries in the four western provinces. The majority of the bakeries operated by Inter City Western Bakeries Limited were later acquired by Weston's Bread and Cake (Canada) Limited (a subsidiary of George Weston Limited) and Lake of the Woods no longer has any financial interests in bakeries in Western Canada.

Ogilvie has controlling stock interest in some baking companies but also has substantial interests in others by way of minority stock holdings, financial mortgages or loans. In 1929 Ogilvie secured control of Consolidated Bakeries of Canada, Limited which had acquired baking companies in the city of Montreal and in a number of cities in Ontario. Ogilvie's interest in Consolidated Bakeries, according to evidence given to the House of Commons Special Committee on Prices in 1948, is now represented by the ownership of 155,504 shares out of a total issue of 339,442. In 1948, Trent Valley Baking Company Limited, which had acquired bakeries in five Ontario cities formerly controlled by Purity Baking Company, Limited, became a subsidiary of Consolidated Bakeries. Ogilvie has a controlling interest in McGavin Bakeries, Limited, which operates bakeries in the four western provinces and minority stock interest in McGavin

<sup>1</sup> See also, "Investigation into an Alleged Combine in the Bread-Baking Industry in Canada", Report of Registrar, Ottawa, February 5, 1931.



Limited, a British Columbia company, and McGavin Limited, a separate company with three plants in Alberta, which are under the same management. Among the other baking companies in which Ogilvie reported a financial interest are Pain Supreme Limitée, Montreal and La Boulangerie Nationale Limitée, Quebec.

Purity when it operated as Western Canada Flour Mills Company had controlled, through Purity Baking Company, Limited, bakeries in Montreal and a number of plants in Ontario, Manitoba, Alberta and British Columbia. As has been mentioned above, some of the bakeries in Ontario were subsequently acquired by a subsidiary of Consolidated Bakeries. Other bakeries in Montreal, Toronto, Winnipeg, Brandon and Vancouver were acquired from Purity Baking Company, Limited by General Bakeries, Limited, which was incorporated in March, 1946. Although Purity is not reported as having any share interest in the new company it has a substantial investment in its bonds. On April 17, 1946, Purity and General made an agreement under which General undertook to purchase from Purity for a period of twenty years all the spring wheat flour required for the four bakeries on condition that Purity supplied such flour on terms as favourable as those granted to bakeries of like character in the same locality.

Reference has been made to the acquisition by Weston's Bread and Cake (Canada) Limited in 1938 of certain bakeries in Western Canada previously owned by Inter City Western Bakeries Limited. Another subsidiary of George Weston Limited, Geo. Weston Bread and Cakes, Limited, operates bakeries in five cities in Ontario and thus constitutes another bakery chain.

Quaker and Robin Hood have not acquired any bakery chains, although Robin Hood in recent years has extended financial assistance to a number of independent bakeries.

The inter-relationships between milling and baking companies in the provinces of Saskatchewan, Alberta and British Columbia and the predominant position which multiple baking companies have in the bread-baking industry in those provinces are fully described in the recent report on Bread-Baking Industry in Western Canada.<sup>1</sup>

The output of bread in Canada in 1946 in the plants of multiple baking companies, including mill-controlled bakeries and other bakery chains, amounted to about 44 per cent of all bread produced in the bread-baking industry that year. The greatest importance has accordingly been attached to their purchases of flour. These purchases have normally been made through large contracts or have been influenced by the financial relationships between the purchaser and the supplier. As a result, those mills not possessing bakery subsidiaries have been increasingly dependent upon business received from bakeries under independent ownership.

At various times members of C.N.M.A. and of the Western Division have endeavoured to make arrangements which would lessen the possibility of purchases by multiple bakeries disturbing the association structure of prices. Mills without bakery subsidiaries might be less ready to maintain prices on independent purchases if they felt that they were excluded from the substantial market represented by mill-controlled bakeries. These factors are referred to in a memorandum of August 30, 1938, from C. Ritz of Minneapolis to R. A. Henderson (Robin Hood), Montreal:

"For several years we would not join a conference on the bakery business for the very good reason that we would simply be holding the umbrella for the bakery owning mills. On the one hand, the bakery owning mills get a good price from their own bakeries and on the other hand, in guaranteeing to hold the list, we hold the umbrella over the small mill on the independent trade and we are therefore between the upper and

<sup>1</sup> Report of H. Carl Goldenberg, Special Commissioner, of an investigation into an Alleged Combine in the Bread-Baking Industry in Saskatchewan, Alberta and British Columbia, Ottawa, November 3, 1948.

nether millstones. We stuck to that story, which we think represents the facts, until about 3 years ago when Morris and Short were anxious to work out a conference. We agreed to it with the understanding that the business of a certain list of good independent bakers would be turned over to us. As a face saving proposition, however, Morris thought they should (*sic*) quote not more than 10c per barrel over our price to these bakers and we agreed to it and for a while it worked along pretty well. More than a year ago they started chiseling on this list and claimed they did it because we were not maintaining our side of the bargain. Then about a year ago, as I recall, you threw it over at a meeting. We are now, therefore, back about where we started and though I rather dislike to, at this time, take any stand that would jeopardize the whole structure yet perhaps that is what we should do. They have as much to lose as we have but perhaps Ogilvies are looking for such an opportunity. Your suggestion about opening up all Ontario towns where mill owned bakeries are located will give them plenty of room for thought and probably force this thing to a head without a bust up." (Exhibit 626)

The purchases of flour by multiple bakeries in Western Canada formed such a large part of the total bakery business that efforts were made from time to time to make arrangements to ensure Quaker and Robin Hood participation in supplying mill-controlled bakeries. One such arrangement which is reported to have been in effect until 1939 is described in a letter of January 20, 1940, from C. Ritz (Robin Hood) to C. E. Soward (Maple Leaf), Toronto:

"The arrangement made on December 14, 1935, provided for the division of the Saskatchewan mill-owned bakery flour business between the Quaker company and ourselves in return for our cooperation on independent bakery trade." (Exhibit 371)

In Eastern Canada lists of bakers were drawn up at various times and it was agreed that Robin Hood and Quaker might quote them at a lower price than other members. Other bakers could be quoted on an "open basis". Memorandum No. 51 of Executive Meeting of September 10, 1940, sets out the two lists of bakers and then goes on:

"In return for the above it is understood that Maple Leaf will turn over to Robin Hood and Quaker their Canadian Bakery business at Moose Jaw, Saskatoon and Battleford—the arrangement which existed between December, 1934, and up to 1939. Furthermore, that Ogilvies and all other members of the Association agree not to sell Weston's at Moose Jaw, Regina, Saskatoon and Calgary.

Also in return for the above it is understood that Robin Hood and Quaker shall not quote to Canada Bread, Consolidated, Purity Bakery, Eastern Bakeries in Nova Scotia, McGavin Bakeries and Canadian Bakeries.

The above arrangement to remain in effect until the December meeting when it is understood that the list named on Page 3 will be revised in the light of experience developed between now and then." (Exhibit 572)

Discussions continued to be held at association meetings and between members in an effort to secure an acceptable basis on which mills without baking subsidiaries could be assured of bakery business. The following excerpt from an already quoted letter of May 18, 1945, from J. G. Wharry (Quaker), Peterborough to W. P. Noble of the Saskatoon office indicates the importance attached to this matter:

"I would certainly keep the situation constantly before the meeting and who knows, maybe it would be a working basis for you to get either a share of the mill-controlled bakery business in the West or use it as a threat to make some of these other mills stay away from independent bakeries. I think if you lose business from an independent baker to a mill that controls bakeries in the West because that mill cut the price, then I would certainly let my own conscience guide me as to where you wanted to go on price." (Exhibit 228)

Sales to the Weston chain of bakeries in both eastern and western Canada were a matter of concern to association mills and quotations to Weston were often made on an "open" basis. However, at times agreement was reached for a

common price to be quoted to Weston as is indicated in a letter of November 19, 1945, from G. S. Dodington (Purity), Toronto to R. A. Robertson of Geo. Weston Limited, Toronto, from which the following extract is taken:

"To your Company, we in common with other large mills, quote a special price of 20c per barrel under the regular carlot bakers' prices in Western Canada. You may recall I covered this point with you, when favoured with your previous contract on June 21, 1945, and the structure of flour prices to bakers in the West has been exceptionally well maintained."

(Exhibit 460)



## XII. CONCLUSION

This report follows another report on a related subject, an alleged combine in the bread-baking industry in Western Canada. Both reports disclose developments of much the same character—control of the industry concentrated in a few very large corporations and the efforts made under the leadership of the dominant groups to control competitive activity. They describe measures which have been taken to link the two industries by means of the financial control of some chain bakery companies by some flour milling companies and how this limiting of competitive purchases by the baking industry has had its impact on the flour milling industry. Each group within its own field has sought in its own way to attain the objective of eliminating price competition as a factor in business enterprise. This report is concerned with the measures taken by the principal flour milling companies which have been associated in the Canadian National Millers Association and C.N.M.A. (Western Division).

It is clearly established by the evidence obtained in this investigation and reviewed in the preceding sections of this report, that since at least 1936 there have been continuing efforts on the part of the principal milling companies to secure and maintain agreements amongst themselves and with others which would fix common prices for the sale of flour, rolled oats, millfeeds and coarse grains which they sold. These efforts were directed to having such agreements in effect in all markets in Canada in which the associated firms carried on business. The fact, and it is a fact, that the agreements were not completely adhered to at all times does not alter the basic character of the arrangements or obviate the fact that they were intended to and did operate to deprive the public of competitive pricing which would have obtained otherwise. The millers have sought to create the impression that the period of their association has been marked by active price competition interrupted only occasionally by understandings which were intended to protect them from serious loss or bankruptcy. Actually the history of their activities is a record of a series of agreements which were broken at times, only to be followed by renewals or modifications designed to bring the parties back into an agreement.

Care has been taken in this report, to the fullest extent possible, to describe the agreements, the reasons for them and the manner and degree of their execution, in the language used by the participants themselves in their own documents. Most of these documents were prepared at the time of the agreements or shortly thereafter, and were kept by the companies as part of their records. The language used was the subject of many explanations by the witnesses who appeared during the inquiry, and their interpretations have been presented earlier in the report. These interpretations are, as has been noted, varied and often conflicting, and in most cases conflict with the clear meaning of the documents, although in some instances oral evidence has been of the utmost value in clarifying the true meaning of some documents.

Had only one agreement of a limited character been involved there might be some question of particular terms employed, but where there is a consistent series of arrangements extending over a considerable period of time it must be accepted that the language used in the documents was intended to have the normal meaning it presents. Bearing in mind the evidence authenticating the documents, the recognition of them by the companies as relevant records, and the largely consistent picture presented by documents corroborating one another, this preponderant reliance on documentary evidence seems fully justified.

The evidence which has been examined does not support the extreme view that price competition amongst C.N.M.A. members has been completely eliminated across Canada throughout the period of the Association's existence. It would be equally wrong to conclude from the evidence, at the other extreme, that the price agreements entered into were not effective at any time or in any area.

During many periods agreements to maintain price uniformity have been completely effective. At other periods (some of them rather prolonged) and in some areas (now in one and now in another), certain members have sold below the Association's prices and have broken their own agreements to maintain them. Sometimes the break was so serious as to make it necessary for all members to disregard the list prices, until, as the documents say, confidence was restored. Efforts were made, and with considerable success at times, to prevent even isolated instances of price reduction. When recalcitrance of one or more members threatened to disrupt, or actually disrupted, the price arrangement, every effort was made to restore harmony and re-establish prices on a uniform basis.

The history of the Association is therefore not one of complete and continuous harmonious relations. Recriminations, most frequently directed against one company in particular, were very often indulged in, at the meetings of the members and in their correspondence. Threats to withdraw from the agreement were made occasionally, and in two or three instances were carried into effect for short periods by certain companies. At times competition was apparently open and, at such times, as one executive expressed it, "every mill has the privilege of doing what [it likes] as far as the price is concerned".

Dissatisfaction with the measure of adherence obtained is expressed in many letters, but in others, written within approximately the same periods, members have expressed themselves as well satisfied with the general observance of the agreements. Commenting on the effectiveness of the arrangements over the years, rather than on conditions in any specific period, one member wrote, in 1943:

"Over a period of years, we have found that a majority of the other mills have been willing to come to terms after each period of price depression."

Another member, in a letter written in 1944, said:

"I have shut my eyes to many breaches in the past, as I have always worked on the principle that 'half a loaf is better than none'."

One reason for the Association's inability to maintain uniformity of prices at all times is to be found in the fixed price level itself. An enterprising firm with idle capacity is under constant temptation, in spite of agreements, to get business at prices below the fixed level. The more efficient firms, with lower costs of production, administration and distribution, should be able to increase volume by reducing prices and still operate profitably. No attempt has been made in this inquiry to appraise the relative efficiencies of the several mills in the Association, but differences there are, unquestionably. When the president of one company was asked if the price structure was set on the basis of the least efficient mill, he replied, "Unfortunately, that is so".

Small mills, outside the Association, operating at lower cost and selling at lower prices, have also provided a temptation to Association members to depart from their fixed prices at times in the areas served by the small mills. The well-advertised product of the big mills can sell normally at some premium over the small-mill product. When the disparity between the two becomes too great, the public in the areas affected turns to the lower-priced flour or rolled oats. Then the Association members are faced in these areas with serious loss of business if they continue to be bound by their agreements. They may decide, as sometimes happened, to stick to the agreement, considering some diversion of business a lesser evil than a general reduction in price. Sometimes they have agreed on



certain price reductions, in the areas affected or to particular customers. The purchase and dismantling of a small mill was effected in one province and considered in at least another. Threats of reprisals against small mills were used on occasion, and on others diplomatic approaches were made to secure their agreement to maintain prices just below the Association level. In other instances, individual members, in violation of their agreements, have met the small-mill competition on a price basis and thereby compelled other members to follow suit. In such circumstances as these, complaints were made about "insensate cutting" or "terribly upset conditions".

It is most desirable in the interests of the areas served by small mills that these sources of supply should continue in existence, and that they should be free from any understandings which would tie their prices to those of their larger competitors. It is equally important that they should be protected from any coercion which might force them to follow the lead of the big mills.

The influence of small-mill competition in the domestic market has declined in recent years with the reduction in their number, from 412 in 1934 to 155 in 1947. Their recent concentration on exports has further diminished this influence. In 1946 they supplied only ten per cent of domestic flour requirements. To what extent they may be effective in the domestic market in the future cannot be foreseen. Each new grouping of bakery plants and the increased demand for flour by large baking corporations, some of these controlled by the large mills, will have a serious effect on the available domestic market for the small mills. The strong influence of new methods of advertising in persuading consumers to rely on national brands further increases the difficulties of the small mill in the domestic market. As the evidence has shown, the C.N.M.A. has normally been prepared to disregard the limited impact of small mills on the price structure in the belief that general agreement could be maintained among its members. In these circumstances it becomes obvious that the restriction of price competition among the principal suppliers in the market has very serious detrimental effects on the Canadian public.

Both factors, internal dissension and external competition from the small mills, made difficulties for the members of the C.N.M.A. in their efforts to prevent reductions from their agreed prices. They prevented the complete unanimity which was the object of the Association. Throughout the life of the Association the members continued to subscribe to the agreements, in spite of the breaches which occurred and in spite of the outside competition. The obvious conclusion is that the agreements must have been of considerable value to the members in maintaining prices. One member, writing in 1939, stated that even if his competitors could not comply fully with a price agreement he still wanted an agreement "so that we can get a nominal price—as high as we can have it—because if they only subscribed, say, 60 or 70 per cent to a price we are . . . better off . . ." That, of course, is not an admission that the agreements were effective 60 or 70 per cent. "Even if it only functions 50 per cent", another executive is reported to have advised his Western manager, "it is desirable to keep the miller's association". Another representative wrote in 1945 that he recognized that "no agreement has ever worked 100 per cent, but", he added, "by working 75 per cent it means a lot of extra dollars in the treasury". In oral evidence he stated that this was his estimate of successful operation in 1945 in the West. On being questioned he conceded that conditions had been better in this respect in 1946, and better still in 1947 (Evidence, pp. 531-2). The effectiveness of the agreement on prices of one product, rolled oats, was estimated by the head of another company in 1938, not in percentages but in dollars and cents, when he wrote that ". . . the rolled oats conference has made us real money during the past five or six years. We estimate it has been worth \$75,000 to \$100,000 a year more than we got during the preceding years . . ."

The effect on the public of price agreements, even when they are not observed



fully, was commented on by a recent committee of inquiry in Great Britain. The following paragraph is of some significance in relation to the conditions found in the flour milling industry in Canada:

"It is frequently argued that if whenever there are conditions making for real competition, agreements tend to break down, then the agreements are of no importance. We reject this view. In the first place, many agreements and arrangements are strong enough to withstand a strong depression. Admittedly, some agreements, and indeed some trade associations, break down completely during a depression. On the other hand, severe depression tends to give rise to new associations and new agreements. Manufacturers and merchants faced with steadily increasing price cutting may attempt to enter into new arrangements which they regard as a way out of the depression. Moreover, in industry as a whole, both in this country and elsewhere, the prices of monopolized products fell less during the 1929/1933 depression than the prices of non-monopolized products. In the second place, the people who break the agreements are always limited in number; it may be said that whatever may be the ethics of such action they are enterprising and efficient. It must be remembered, however, that consumers as a whole are dependent not just on one or two enterprising suppliers but on all suppliers. The undesirable effects of these agreements are felt, therefore, throughout most of the field, even though they are freely broken on its fringe."<sup>1</sup>

Some representatives of the flour milling companies, in their oral evidence, contended vigorously, and with apparent sincerity, that the words "agreed" and "agreement" as used in their minutes and other documents with reference to prices should not be taken to mean that the members entered into any undertaking to maintain the prices which were recorded as having been agreed upon. These prices, according to some witnesses, represented merely a target to aim at, a yardstick of values. Others contended that, even if there were agreements in the ordinary meaning of that term, they were never carried out. These various explanations have been reported and commented on in chapter VIII of this report. The weight that should be given them must be determined by consideration of many factors. The phraseology used throughout the years makes it difficult to accept these interpretations of "agreement". The terms usually employed were "agreed" or "unanimously agreed", but variations were used such as "reaffirmed their determination", "pledged their honour to maintain prices" and many other synonymous phrases. The Association's records are replete with such statements of agreement having been reached; only relatively few quotations, for reasons of space, have been included in this report. Evidence that "agreement" meant agreement, an undertaking to maintain common prices, is found throughout the correspondence of the members.

In this and other inquiries the parties have frequently claimed that alleged "agreements" were not in fact binding agreements. They have emphasized in some cases the significance of such facts as absence of formal contracts, absence of signatures, legal unenforceability of the arrangements, lack of specific sanctions or penalties for non-observance, and general informality in arriving at and in carrying out the understandings. Such facts are indeed relevant in considering whether evidence of agreement exists, but the presence of agreement may be clearly inferred from less formal but significant evidence. Once there is proof of combination and agreement, the nature and effect of the combination, its duration, and the parties to it must be considered. A "combine" (other than one by way of merger, trust or monopoly) is defined by the Combines Investigation Act as "a combination . . . of two or more persons by way of actual or tacit contract, agreement or arrangement" which has the prescribed effects of restricting competition and which "has operated or is likely to operate to the detriment or against the interest of the public". Thus what is important is the operative joint enterprise or combination which has arisen from or is carried out by means of any type of formal or informal agreement, any type—to use words employed in various legal decisions—of "understanding", "common design", "concert of action", "pre-arranged plan", "gentlemen's agreement", or other meeting of minds in common action. "Agreement", in the sense thus used, has been abundantly shown to exist in this case.

<sup>1</sup> *"The Distribution of Building Materials"*—Report of the Committee of Enquiry under the chairmanship of Lord Simon (London, March 1, 1948).

Reference is made in Chapter VII to a practice which the C.N.M.A. followed of keeping what is in effect a double set of minutes. The official minutes of the Association, although purporting to record the discussions and decisions at the Executive meetings, contain practically no reference to the frequent understandings and agreements reached at those meetings on prices, competitive conditions and related matters in the domestic market. They record decisions on many matters of much less importance and discussions of other matters on which no decision was reached. A separate record was kept, however, in a series of "confidential memoranda", also prepared by the Secretary over a period of twelve years, of discussions and decisions at the same meetings. They related primarily to such matters as are dealt with in this report. Examination of the minutes alone, which were produced without hesitation, would give the impression that the members entered into no discussions of price and reached no price agreements. Examination of the confidential memoranda, none of which was found in the Secretary's records, disclosed a continuous series of price discussions and price agreements.

In the Western Division, price discussions and decisions were reported fairly fully in the minutes of meetings from 1936 to 1947. The secretary admitted, however, that he had destroyed his set of the minutes shortly before the present investigation started in September, 1947. A fairly complete set of these minutes was eventually pieced together from copies found in the possession of the companies concerned, either in the western offices or in their head offices in Eastern Canada. From these minutes, and from the correspondence records which confirm and amplify them, it has been possible to set down in this report a fairly complete and accurate account of the price-fixing activities of the Western Division.

One company, Maple Leaf Milling Company, Limited, claimed that during the wartime control period from December, 1941, to September, 1947, its actions and those of other companies were so completely subject to government control that "it was quite impossible for an illegal combine to exist". It stated:

"In 1941 the flour milling industry came under price control regulation and a Flour Controller was appointed to supervise its activities. The basic period chosen for the setting of price ceilings unfortunately for the industry coincided with a price war in some areas and the resulting low prices imposed, became an increasing handicap as costs steadily rose. Despite this, the strange anomaly developed from time to time, of flour being sold below the domestic ceilings and below cost. So competitive is the industry that mills, even in a seller's market, could not refrain from looking ahead to establishing domestic prospects following the war.

The industry, at the request of the Government, voluntarily relinquished the refundable portion of the excess profits tax so that high profits from export business above low standards were taxed at 100%. Domestic flour prices were heavily subsidized and ceilings imposed on all products.

During this period the Government, through its agencies gave every encouragement to members of the milling industry cooperating to eliminate waste and mobilize its production toward feeding the allied war effort. Many of the acts now complained about were officially inspired. Allocation of business to mills or warehouses best located to economically accept it was suggested. Elimination of advertising was urged. Standardization of containers and weights was advocated. Rulings in regard to wheat supply forced a uniform policy on future delivery. Dozens of meetings with Government officials were held and the resulting decisions and orders were promulgated through the Canadian National Millers Association which served a vital need as a clearing house for the innumerable problems of the war years.

Furthermore, every step taken by the Mills, to which the Maple Leaf was a party, jointly or through the Association, was done at the direction of or with permission from the Flour Controller, the Canadian Wheat Board, the Wartime Prices and Trade Board or some other Government agency. Every domestic sale was made at or below ceilings imposed by the W.P.T.B."

No exception is taken in this report to the wartime activities of the C.N.M.A. and its members which were authorized by the Wartime Prices and



Trade Board and other government agencies. The C.N.M.A. greatly assisted the control agencies as a "clearing house" for wartime problems affecting the flour milling industry. Its members co-operated by eliminating waste, curtailing unnecessary advertising, standardizing containers and weights; it co-operated, indeed, in all the ways mentioned in the second and third paragraphs quoted above. No question is raised, either, about the statement that "every domestic sale was made at or below ceilings imposed by the W.P.T.B." The matter of sales below ceiling in the control period is referred to in Chapters III and V.

The practice during the war years to which exception is taken in this report is the same practice to which exception is taken with respect to other times, that of agreements to remove competition in price. In the war years regulations established maximum levels beyond which prices could not be increased. In this period concerted efforts were made to prevent competition by securing agreement as to the prices which the members would follow. Such joint action was neither required nor sanctioned by the Prices Board or any other government agency. Board policy was definitely directed to the maintenance of competitive conditions with respect to prices.

Reference is made in the above quotation to the fact that, at the request of the Government, the industry voluntarily relinquished the refundable portion of the excess profits tax. This measure of co-operation facilitated the Government's subsidy arrangements for the industry. A word of explanation is necessary. Under the Excess Profits Tax Act, 1940, higher rates of tax applied to profits exceeding 116 $\frac{2}{3}$  per cent of "standard profits" (i.e., the average of a company's profits for the years 1936 to 1939). In the period July 1, 1942, to December 31, 1945, such excess profits were taxed 100 per cent, with provision for a post-war refund of 20 per cent of such tax. The rate of 100 per cent was reduced in 1946 and further reduced in 1947. Certain industries, including the flour-milling industry, which were paid subsidies in order to provide for increased costs which they could not absorb, were asked by the Government to forgo any claim to the refundable portion of the tax, except on any profits which exceeded the amount of the subsidy. In the case of the flour-milling industry these subsidies were paid to permit the sale in Canada of hard wheat flour at prices within the ceiling. The arrangement with that industry regarding limitation of profits extended from August 1943 to July 1947. Since it was obviously undesirable to permit any part of such subsidy payments to be added to profits, the arrangement provided that no part of the tax would be refundable. That is, all profits in excess of 116 $\frac{2}{3}$  per cent of standard profits, to the extent that subsidies contributed to such profits, were to be paid to the Government. Had this arrangement not been made, however, some alternative would have been necessary, as the Wartime Prices and Trade Board pointed out in its annual report for the period ended March 31, 1943, in referring to similar arrangements which had been made with other industries. The report said:

"This arrangement, although it has the effect of cancelling the 20 per cent rebate on subsidies contributing to profits taxable at 100 per cent, nevertheless is not one-sided, as the alternative would be a much more drastic subsidy formula which might, with changed business conditions and a restricted volume of operations, result in the industry making no profits at all."

When the arrangements with the flour-milling industry were completed in August, 1943, it was recognized that excess profits had been made by some mills as a result of a large increase in export flour sales principally to the United Kingdom. Since through Mutual Aid and other arrangements these sales were being largely financed by the Canadian Government there was further justification for withholding the refundable portion of the excess profits tax under the subsidy payments arrangements.



In the present inquiry the president of the C.N.M.A. pointed out that under such a profit limitation arrangement any reduction in domestic prices would result in reduction in profits and would therefore reduce the amount paid in taxes under the Excess Profits Tax. As most of the export flour was sold at a contract price, a company might be tempted to earn goodwill for the future by selling in the domestic market at low prices without regard to cost and, within the limits set by its standard profits, such reductions could be made at the expense of excess profits taxes. It could not be expected, of course, that such a policy on the part of one company could be pursued without inviting similar action by others. No action was taken by the Wartime Prices and Trade Board to set a floor price nor was any encouragement given to the milling industry to prevent reductions in domestic prices. Assuming that in some instances milling companies did choose to sell at less profitable levels, knowing that they could not retain profits above a fixed level, the benefit still accrued to the Canadian public in the form of lower prices. The arrangements which the association members had made to prevent price reductions were not made, however, in anticipation of profit control under emergency regulations; they had been in effect long before such controls became operative, and long before the war.

Simultaneous and uniform price increases were put into effect on September 15, 1947, when the wheat subsidy was withdrawn and flour prices were decontrolled. Flour was increased by \$4.05 per barrel and millfeeds by \$10 per ton. While the investigation which followed disclosed little documentary proof of agreement on these particular price increases, examination of company and association records disclosed a series of price-fixing agreements over a period of years. In the oral hearings Association members contended that the uniform price increases in September had not been determined by agreement, although some members admitted that prior to decontrol they had discussed their increased costs. The only discussion of the subject recorded in the confidential memoranda in the East was at a meeting on March 21, 1947, when agreement was reached to convene the eastern sales managers "for the purpose of arriving at proper selling structures in preparation for decontrol: the combined views to be considered by the General Sales Managers in meeting".

In Western Canada the price increases in September 1947 were the same as in the East. The last meeting prior to decontrol was held on April 10, 1947, but the minutes contained no record of agreement. The minutes of February 6, 1947, recorded, however, that the Western Executive had "considered the preparations that should be made in anticipation of a change at any time" in the Orders in Council and regulations regarding subsidies and price control. The minute added:

"The Secretary was directed to write Mr. Murphy of Montreal setting out, for examination by the Eastern Executive, the opinion expressed as to the added cost factors, over and above wheat and millfeed values, which should be taken in account on 'decontrol' of flour in the domestic market."

On March 6, according to the minutes, "the Executive again considered the preparations that should be made in anticipation of 'decontrol'". In the case of five member companies in the West the increases were ordered by head office or were decided upon after consultation with head office.

The increases in September 1947 are dealt with briefly at the end of chapters III and V, and the conclusion is there recorded that there is justification for at least the strong presumption that the amounts of these advances on flour and millfeeds were arrived at by agreement.

Since the investigation started in September 1947 there have been many evidences of a restoration of price competition in the flour milling industry. Few Association meetings have been held, the price agreements do not appear to have

been operative, and prices of flour reported to the Parliamentary Committee on Prices in 1948 showed very substantial reductions from the levels which prevailed immediately after September 15, 1947. Increases were made, however, in the price of millfeeds, which have been in relatively short supply, and these increases were to some extent an offsetting factor to price reductions in flour.

It has been argued by members of the C.N.M.A., as others have argued in similar investigations in other industries, that the peculiar nature of the industry makes necessary the restriction of that freedom of competition which the law is designed to protect. On behalf of the large milling corporations it has been contended that the nature of the operations requires heavy capital investments which result in relatively inflexible overhead costs, and that the determination of prices by the independent action of individual companies would result in price wars which would lead to a state of chaos in the industry. These and similar considerations were put before the Royal Commission on Price Spreads in 1935, at a time when the milling industry was in extreme difficulty. After examining the problems of the industry, the Commission reported, at page 96, that the public interest would be best served if "price competition is maintained between milling companies".

The form of industrial self-government which has been established in this industry, and which is exhibited in the series of agreements which have been disclosed in this report would, if fully effective, completely eliminate competition in price among Association members and others who could be induced to conform to the same arrangements. The evidence shows the steps which were taken to deal with each manifestation of price competition and to remove or limit its influence. Starting from accord on a basic list of common prices, agreements have been made to ensure that uniformity of prices would be maintained in different regions of the country, and that such uniformity would be maintained whether products were sold on the basis of trade lists or on sealed bids. Variations in prices which might arise through independent classification of customers were removed by joint arrangements to set up trade categories and the discounts applying to them. The special situations created by the war became the subject of consultation and agreement. When competition from outside the combination became significant, measures were employed to check its development or to seek to bring it into conformity with the basic agreements. When large orders of mill-controlled bakeries or other chain bakeries seemed likely to disrupt the non-competitive pattern which had been established, special efforts were made to allocate business so as to ensure the adherence of dissatisfied participants or to agree on a limited area in which price competition might operate.

At times when tenders were called for by federal or provincial governments or by other large buyers, members have checked their proposed quotations with each other, or submitted them through the Association Secretary or regional group representative, in order to ensure that the bids would be at identical prices. On other occasions, in respect of some classes of government business, arrangements have been made to quote varying prices on tenders with the understanding and expectation that the company submitting the lowest arranged bid would receive the order, and with the understanding, so as to divide the business, that on future tenders other companies would be the successful bidders. Quite apart from other arrangements limiting competition, many of the arrangements respecting government tenders, depriving as they do the government and through it the public of the advantages to be obtained from genuinely independent tenders, are in my opinion clearly contrary to the Combines Investigation Act.

The dependence of the Canadian milling industry on export markets, a factor which has been referred to earlier in this report, was emphasized by all



the larger milling companies. "Under normal, as opposed to wartime conditions", it was stated by one company, "the capacity of the mills which are members of the C.N.M.A. is preponderantly employed in the export trade whereas the capacity of the mills which are not members is preponderantly employed in the domestic market. As a result, the C.N.M.A. mills are to a very great extent dependent upon export trade to maintain their operations at capacity". It has already been shown that during the greater part of the period between the two World Wars the volume of export trade was not sufficient to maintain capacity operations. The result, according to another company, was that a considerable amount of surplus capacity continually over-hung the domestic market.

The potential and actual operations of small mills and the presence of surplus capacity in the large mills, it was argued, would operate to prevent any effective agreement by the larger mills to curtail their competition in price in any substantial degree. The argument advanced was that each company with surplus capacity would actively compete with the others to get that volume of business which would enable it to keep its mills operating at the highest capacity possible.

Surplus capacity and the presence of small mills have been undoubtedly significant factors in the Canadian milling industry; their tendency is to limit the area within which the C.N.M.A. could expect to secure and maintain agreement on price. Without such factors, agreements more far-reaching in character might have been made, but that does not render innocuous those which have been entered into. The disruption of the restrictive agreements which infrequently did occur as a result of such market conditions cannot be regarded as a substitute for the safeguard of freedom of competition which should prevail as a general characteristic of business enterprise. That safeguard should be effective at all times, and not only when self-imposed restrictions upon it can no longer be tolerated by some of those who fashioned them.

It has been necessary in this report to examine the operations of C.N.M.A. and of its Western Division with particular attention to agreements and arrangements restrictive of competition. These have formed but one aspect of the activities of the Association, whose functions have embraced many other matters with which this report has not been concerned because they raise no question under the Combines Investigation Act. Much of the work of C.N.M.A. has apparently been in the nature of trade promotion and industry representation which has been highly regarded by its beneficiaries, the flour milling companies, and, indeed, in some instances, has been greatly appreciated by public agencies. Examples of such activities are included in a submission made by one company. It states that "the real objects, purposes and accomplishments of the Association consisted, amongst other things, in the following important matters relating to the milling industry:

1. Representations to Canadian Wheat Board regarding the price of wheat;
2. Discussions regarding supplies to the British Ministry of Food;
3. Shipment of flour to Russia;
4. Representations to the Minister of National Revenue regarding income and excess profits taxes;
5. Consideration of war risk insurance;
6. General export matters including drawback of duties paid;
7. Labour relations;
8. Export of flour to the United States;
9. Representations to the Senate Committee and to the Minister of National Revenue on the taxation of co-operatives;
10. Representations to the Transport Controller regarding freight and transportation matters;
11. Representations to Government authorities regarding grain standards;
12. Representations and assistance to the Canadian Council on Nutrition;
13. Distribution of Canadian flour in the United Kingdom;



14. Representations regarding the Canada-United States Trade Agreement;
  15. Submissions to the Trade and Tariff Committee;
  16. Representations to the Flour Administrator;
  17. Representations to the Department of Agriculture regarding Pure Foods and Drug Act and the quality of flour;
- and other similar matters of importance to the national economy."

Joint activities for the general benefit of an industry which do not detrimentally affect the public interest in freedom of competition are not prohibited by the Combines Investigation Act. But practices adopted to secure uniformity of prices among competitors or to impose other serious restrictions on competition are not altered in character by the fact that the Association is also engaged in other directions on matters to which no exception can be taken.

The definition of a "combine" in the Combines Investigation Act includes a combination carried on by agreements having or designed to have certain effects, such as the fixing of common prices and the lessening of competition, which has operated or is likely to operate to the detriment or against the interest of the public.

Unquestionably the design of the members of the C.N.M.A. was to establish common prices for all their products and thus completely eliminate price competition amongst themselves. Their design was also to lessen the competition of smaller mills outside their membership, not only by inducing them, through persuasion or coercion, to maintain prices at levels not too far below the Association level, but also by using other methods to restrict their competition.

As to the effect of the agreements, enough has been said in this report to make it clear that price competition was actually and seriously lessened, lessened to such an extent as to operate against the public interest. It is fortunate for the Canadian public that the dissension which arose at times among the members of the Association, and the limited independent competition which they had to meet, made it impossible for them to give full effect to their designs. It was, in a sense, an accident or a series of accidents that prevented complete adherence. The language used by a judge of the Supreme Court of Ontario would be as applicable to this case as it was to the particular circumstances he was considering:

"But the system adopted by the Electrical Estimators Ass'n is not to be judged by its accidents, but by its tendency—not by the circumstance that sometimes the members of the association made no profit, or sometimes made too much, but by what the thing was in essence that the defendants were seeking to accomplish. That thing was the prevention or lessening of competition."<sup>1</sup>

The companies most active in establishing arrangements to restrict competition in the flour milling industry have been indicated in the preceding sections of this report. Reference should be made to certain corporations whose positions have been less clearly defined.

Copeland Flour Mills Limited, of Midland, Ontario, was a member of the Canadian National Millers Association from 1922 to 1934 and for a period between June, 1946, and December, 1947. No evidence has been found, however, to indicate that this company has been a party to any of the agreements described in this report.

McDonald and Robb Limited, of Valleyfield, P.Q., has been a member of the C.N.M.A. throughout the period 1936-1947. It has been represented at approximately 80 per cent of the meetings of the Executive in this period, for which records are available, and has also been represented on the Quebec Sales Managers Committee.

Lakeside Milling Company Limited, of Toronto, became a member of C.N.M.A. in June, 1947. The evidence set out in this report clearly establishes,

<sup>1</sup> Raney, J., in *Re x v. Alexander Ltd. et al.*, (1932) 2 D.L.R. 109, at p. 123.

however, its extensive participation prior to that time in the activities of the Maritime Sales Managers Committee. While it was submitted that the Maritime Sales Manager of the company had no authority, and that in fact he made no commitments on behalf of Lakeside, the documentary evidence clearly indicates that such commitments were made and approved by a senior officer.

The Brackman-Ker Milling Company Limited, of New Westminster, B.C., is a wholly-owned subsidiary of Purity Flour Mills Limited. While the extent of its participation in the various agreements among members of the Western Division is not clear, the evidence does disclose that a representative of that firm attended and took part in meetings of the Vancouver group and in addition was secretary of that group. In some cases his attendance at such meetings appears to have been as a representative of the parent company, Purity. Brackman-Ker's participation in the special system of tenders to the Department of Munitions and Supply in British Columbia, which has been described in chapter IX, and in other agreements, is clearly established by the evidence.

Ellison Milling & Elevator Company Limited, of Lethbridge, Alberta, is an associate member of the C.N.M.A. (Western Division). The extent of its participation in these agreements is not completely clear. The evidence clearly indicates that it participated from time to time in the activities of the Alberta group at least until 1940 and in those of the Vancouver group at least until 1942. It also appears to have received, from time to time and as late as 1947 information on domestic prices or related matters from the Western Division even though it was not a full member and was not represented on the Executive. The evidence clearly establishes its participation in the special system of tenders to the Department of Munitions and Supply in British Columbia, and its participation in other agreements among members of the Western Division.

In my opinion, after careful consideration of the oral and documentary evidence in this inquiry and representations made on behalf of the parties involved, and for the reasons already set forth, each of the following companies has been party to, and has knowingly assisted in the formation or operation of, a combine or combines existing in the manufacture, distribution and sale in Canada of one or more of the following products: flour, millfeeds, rolled oats and coarse grains in Canada:

- Lake of the Woods Milling Company Limited, Montreal, P.Q.
- The Ogilvie Flour Mills Company Limited, Montreal, P.Q.
- St. Lawrence Flour Mills Company Limited, Montreal, P.Q.
- McDonald and Robb Limited, Valleyfield, P.Q.
- The Quaker Oats Company of Canada Limited, Peterborough, Ontario.
- Lakeside Milling Company Limited, Toronto, Ontario.
- Maple Leaf Milling Company Limited, Toronto, Ontario.
- Purity Flour Mills Limited, Toronto, Ontario.
- Robin Hood Flour Mills Limited, Moose Jaw, Saskatchewan.
- Ellison Milling & Elevator Company Limited, Lethbridge, Alberta.
- The Brackman-Ker Milling Company Limited, New Westminster, B.C.

F. A. McGREGOR

Commissioner,  
Combines Investigation Act.

Ottawa, December 29, 1948.

## APPENDIX I

## Zone Differentials—Western Canada, 1941-47

*Western Ontario:*

1. Western Ontario (West of but not including Oba, Franz and Hearst). ..... Basis.

*Manitoba:*

2. Manitoba (including Hudson's Bay Junction). Basis.
3. All Points North of Hudson's Bay Junction.... 20c per Bbl. over Basis.

*Saskatchewan:*

4. Saskatchewan Points ..... Basis.

*Alberta:*

5. Alberta (to and including Edson, Smith and Lac la Biche). ..... Basis.
6. Alberta Points West and South of Edson to Jasper and beyond Smith and Lac la Biche. 20c per Bbl. over Basis.

*British Columbia:*

7. West of Crow's Nest to Kootenay Landing, Waldo, Kimberley, Marysville and Golden. 10c per Bbl. over Basis.
8. West of Golden and Kootenay Landing to Revelstoke and Rossland, including Arrow Lakes. .... 20c per Bbl. over Basis.
9. West of Rossland and Revelstoke, including Okanagan and West to Hope, and North from Kamloops to and including Barriere. 30c per Bbl. over Basis.
10. Coast Points, Vancouver, Fraser Valley East to and including Hope. .... 40c per Bbl. over Basis.<sup>1</sup>
11. Victoria. .... 45c per Bbl. over Basis.<sup>1</sup>
12. Other Vancouver Island Points. .... Add Freight Rates over Vancouver.<sup>1</sup>
13. Pacific Great Eastern. .... Add Freight Rates over Vancouver.
14. West of Jasper to McBride, and South from Red Pass Junction to and including Chu Chua. 50c per Bbl. over Basis.
15. West of McBride to Prince Rupert. .... 70c per Bbl. over Basis. (Exhibit 84)

<sup>1</sup>Differentials shown for zones 10, 11 and 12 appear to have applied to the baker structure but not to the dealer structure, as indicated in Chapter V, Section 3 of the report.



## APPENDIX II

### Nature of the Dealer Structure in Effect When Price Ceilings Were Established

#### "Dealer Structure:

Using the foundation of the Dealer carlot basis for W. Ont., Man., Sask. and Alta. common zones there is shown below the various categories which rest upon it. (For purposes of illustration the price of October 15 of \$5.10 for 1st Pat. 98s Cotton is used . . .).

#### Zones 1, 2, 4 and 5.

	Basis	Flour 1st Pat. 98s C.
Small lot—Delivered . . . . .	20 cents bbl. over Basis	\$5.30
" " —f.o.b. seller's warehouse . . . . .	10 " " " "	5.20
Carlot —f.o.b. cars or seller's warehouse	Basis	5.10

#### Country:

Small lot—Consignment f.o.b. shipping point . . . . .	10 cents bbl. over Basis	5.20
" " —Outright Purchase f.o.b. shipping point . . . . .	10 " " " "	5.20
Carlot —Consignment f.o.b. cars . . . . .	10 " " " "	5.20
" —Outright Purchase f.o.b. cars..	Basis	5.10

. . .

#### Zones 3, 6, 7, 8, 9, 14 and 15.

To obtain the price for the identical categories in zones 3, 6, 7, 8, 9, 14 and 15, the respective zone differentials . . . are added to the above categories.

#### Zones 10 and 11.

Using the foundation of the Dealer carlot basis for Vancouver (within Zone 10) at 40 cents per barrel over the W. Ont., Man., Sask. and Alta. common zones, there is shown the categories which rest upon it. (For purposes of illustration the price for Zone 10 of October 15 of \$5.50 for 1st Pat. 98s Cotton is used . . .).

Classification	Basis	Flour 1st Pat. 98s C.
<i>Retailer:</i>		
(Independent Dealer)		
Small lot—f.o.b. warehouse or delivered	50 cents bbl. over Basis	\$6.00
Carlot —.....	Basis	5.50

#### Chain and Dept. Store:

Small lot—f.o.b. warehouse or delivered	30 cents bbl. over Basis	\$5.80
Carlot —.....	Basis	5.50

#### Jobber:

Small lot—Delivered . . . . .	30 cents bbl. over Basis	\$5.80
Carlot —.....	Basis	5.50

(The jobber is, however, permitted to buy flour in small lots at BASIS when picked up at seller's warehouse.)

Victoria (Zone 11) prices are 5 cents per barrel above the Vancouver (within Zone 10) prices.

Throughout the Fraser Valley (also within Zone 10) the Vancouver 'Retailer' small lot price applies to all classes of the dealer trade delivered to all points to and including Hope, with 20 cents per barrel transportation allowance to be deducted from the face of the invoice when flour is picked up at Vancouver mill warehouses." (Exhibit 40)











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